



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

EPA Needs to Further Improve How It Manages Its Oil Pollution Prevention Program

Report No. 12-P-0253

February 6, 2012



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Abbreviations

CFR	Code of Federal Regulations
CWA	Clean Water Act
DOI	U.S. Department of the Interior
DOT	U.S. Department of Transportation
EPA	U.S. Environmental Protection Agency
ESA	Expedited settlement agreement
FRP	Facility Response Plan
FY	Fiscal year
GAO	U.S. Government Accountability Office
GIS	Geographic information systems
ICIS	Integrated Compliance Information System
ICP	Integrated Contingency Plans
OECA	Office of Enforcement and Compliance Assurance
OEM	Office of Emergency Management
OIG	Office of Inspector General
OSWER	Office of Solid Waste and Emergency Response
SPCC	Spill Prevention, Control, and Countermeasure

Cover photos: *From left:* An aboveground storage facility in Nenana, Alaska, at the confluence of the Tanana and Nenana Rivers; a pump jack at a non-transportation-related oil production facility. (EPA photos)

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At a Glance

Why We Did This Review

The Office of Inspector General received a request from the House Committee on Transportation and Infrastructure to review the U.S. Environmental Protection Agency's (EPA's) steps to ensure the quality and consistency of oil spill prevention and response plans, and to review how EPA tracks violators under the Clean Water Act (CWA) Section 311 program.

Background

In 1973, EPA issued the Spill Prevention, Control, and Countermeasure (SPCC) Rule to establish procedures, methods, and equipment requirements to prevent oil discharges from non-transportation-related facilities. The SPCC Rule requires facilities to prepare plans outlining their spill prevention procedures and countermeasures to address the effects of an oil spill.

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2012/20120206-12-P-0253.pdf

EPA Needs to Further Improve How It Manages Its Oil Pollution Prevention Program

What We Found

Although EPA has taken steps to improve its program to prevent oil spills from known facilities to waters of the United States, the Agency remains largely unaware of the identity and compliance status of the vast majority of CWA Section 311 regulated facilities. Effective program management requires EPA to know the identity and nature of the facilities it is responsible for regulating. EPA has taken a number of steps to improve the quality and consistency of SPCC Plans and Facility Response Plans (FRPs). EPA has also improved its ability to track individual CWA Section 311 violations and violators in a new national database. However, EPA still does not have knowledge of most facilities it is responsible for regulating. In addition, Agency data systems cannot exchange data with each other, and lack consistent and sufficient codes to categorize deficiencies and noncompliance. These data systems limitations prevent EPA from capturing the full details of a known violator's history or identifying trends in compliance and enforcement. As a result, EPA cannot assess the success of steps it has taken to improve the quality and consistency of SPCC Plans, FRPs, or the oil pollution prevention program as a whole. Therefore, the Agency is unable to assess the degree to which its actions will help prevent future oil spills or mitigate their associated impacts.

What We Recommend

We recommend that the Assistant Administrator for Solid Waste and Emergency Response, in consultation with the Assistant Administrator for Enforcement and Compliance Assurance, improve oversight of facilities regulated by EPA's oil pollution prevention program. Specifically, we recommend that EPA improve oversight by biennially assessing and reporting on the quality and consistency of SPCC Plans and FRPs, implementing a risk-based inspection strategy, updating guidance, and consistently interpreting SPCC and FRP regulations. We further recommend that the two Assistant Administrators work together to establish a national oil program database that contains compliance histories for regulated facilities, can track compliance trends, and exchanges data with other EPA databases. While the Agency recognized that it could improve the program, it neither agreed nor disagreed with most of our recommendations. Although the Agency disagreed with our recommendation regarding consistently interpreting regulations, we believe the recommendation is valid. In response to Agency comments, we added the recommendation about biennially assessing the quality and consistency of plans. All recommendations in this report are unresolved.



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

THE INSPECTOR GENERAL

February 6, 2012

MEMORANDUM

SUBJECT: EPA Needs to Further Improve How It Manages
Its Oil Pollution Prevention Program
Report No. 12-P-0253

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is placed to the right of the typed name.

TO: Mathy Stanislaus
Assistant Administrator for Solid Waste and Emergency Response

Cynthia Giles
Assistant Administrator for Enforcement and Compliance Assurance

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. Your response will be posted on the OIG's public website, along with our comments on your response. Your response should be provided in an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. If your response contains data that you do not want to be released to the public, you should identify the data for redaction. You should include a corrective actions plan for agreed-upon actions, including milestone dates. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Dan Engelberg at (202) 566-0830 or engelberg.dan@epa.gov.

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Chapter 1

Introduction

Purpose

We performed this evaluation in response to a request from the House Committee on Transportation and Infrastructure. We addressed the following questions:

- What steps has the U.S. Environmental Protection Agency (EPA) taken to ensure the quality and consistency of Spill Prevention, Control, and Countermeasure (SPCC) Plans and Facility Response Plans (FRPs)?
- How does EPA track Clean Water Act (CWA) Section 311 violations and violators in order to manage its oil pollution program?

Background

CWA Section 311¹ prohibits the discharge of oil or hazardous substances into or upon U.S. navigable waters,² adjoining shorelines, or other areas identified in the statute, in quantities that may be harmful. In recent years, a number of oil spills have had significant impacts on the environment. For example:

- In June 2004, a flow line ruptured in Wyoming, resulting in a spill of 25,074 gallons of oil that contaminated 6 miles of the North Fork Powder River and adversely impacted wildlife, habitat, and vegetation.
- On more than 35 occasions between January 2003 and October 2008, more than 1,314,600 gallons of oily water and crude oil were allegedly released from production fields in Wyoming, resulting in an observable film, sheen, or discoloration on the surface of the impacted water or shoreline. The spills resulted in the pollutants being discharged into the tributaries or drainages of Silver Tip Creek and Salt Creek, which, respectively, are tributaries to the Clarks Fork and Powder Rivers.
- In June 2006, 142,800 gallons of oil allegedly spilled from a containment berm located on the edge of the Corpus Christi Ship Channel. The Corpus Christi Ship Channel, which flows from Tule Lake into Corpus Christi Bay and then into the Gulf of Mexico, is heavily utilized by barge and commercial ship traffic.

¹ “Oil and Hazardous Substance Liability” (33 U.S.C. 1321); also referred to as Section 311 of the Federal Water Pollution Control Act as amended (also known as Clean Water Act).

² The SPCC regulation defines “navigable waters” by referring to Section 502(7) of the Federal Water Pollution Control Act, which states that navigable waters are waters of the United States, including territorial seas.

CWA Section 311 and Federal Responsibilities

CWA Section 311 authorizes the U.S. President to establish regulations for preventing, preparing for, and responding to oil spills. In 1991, Executive Order 12777³ delegated responsibilities for spill prevention and control, contingency planning, and equipment inspection activities to several agencies, including EPA, the U.S. Department of the Interior (DOI), the U.S. Department of Transportation (DOT), and the department in which the U.S. Coast Guard operates (currently the U.S. Department of Homeland Security).

Under Executive Order 12777, EPA was delegated responsibilities to regulate non-transportation-related onshore facilities that could reasonably be expected to discharge oil into navigable waters of the United States or adjoining shorelines. DOI was delegated responsibilities for offshore facilities (including facilities on any inland waters); DOI's Bureau of Ocean Energy Management, Regulation, and Enforcement (formerly the Minerals Management Service) implements these activities.⁴ DOT was delegated similar responsibilities for vessels, transportation-related onshore facilities, and deepwater ports. DOT's Pipeline and Hazardous Materials Safety Administration implements these activities for the department.⁵ The Coast Guard's responsibilities include inspecting vessels and conducting periodic drills to assess the capability of onshore and offshore facilities located in the coastal zone to remove discharged oil and hazardous substances.

In 1994, DOI, DOT, and EPA agreed to a memorandum of understanding whereby DOI retained jurisdiction over facilities located seaward of the coastline. DOI redelegated responsibility for non-transportation-related offshore facilities located landward of the coastline to EPA (this includes facilities located on any inland waters). DOI also redelegated responsibility for transportation-related facilities, including pipelines, located landward of the coastline to DOT.

EPA's Oil Pollution Prevention Program

EPA's oil pollution prevention program, or CWA Section 311 program, is not delegable to states and tribes. EPA's CWA Section 311 program regulates facilities through the SPCC Rule, which EPA initially issued in 1973. The SPCC Rule, which also includes regulations for FRP facilities (discussed later in this section), establishes procedures, methods, and equipment requirements for facility owners and operators to prevent oil discharges from non-transportation-related facilities. The SPCC Rule applies to non-transportation-related facilities with an

³ Executive Order 11548 (35 Federal Register 11677, July 22, 1970) was superseded by Executive Order 11735 (38 Federal Register 21248, August 7, 1973) and then superseded by Executive Order 12777 (56 Federal Register 54757, October 22, 1991).

⁴ Bureau of Ocean Energy Management, Regulation, and Enforcement requirements for spill response plans for facilities located seaward of the coastline, including associated pipelines, are located in the Code of Federal Regulations (CFR) at 30 CFR 254.

⁵ Pipeline and Hazardous Materials Safety Administration requirements for spill response plans submitted to the administration for onshore transportation-related facilities are located in 49 CFR 194.

aboveground oil storage capacity greater than 1,320 U.S. gallons or a completely buried storage capacity greater than 42,000 U.S. gallons. The SPCC Rule only applies to facilities that, due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon navigable waters or adjoining shorelines.

Plans for SPCC Facilities

The SPCC Rule requires regulated facilities to prepare oil spill pollution prevention plans (SPCC Plans) that outline procedures, methods, and equipment to prevent spills from occurring, and countermeasures to address the effects of an oil spill. EPA estimates that approximately 640,000 facilities meet these criteria. Code of Federal Regulations (CFR), in 40 CFR Part 112, provides the requirements for all SPCC Plans. The regulation includes both general requirements for all facilities and specific requirements organized according to the type of oils stored (petroleum oils versus nonpetroleum oils, animal fats, and vegetable oils) and facility type (e.g., onshore versus offshore, production versus bulk storage). The SPCC Rule generally does not require all facilities to identify themselves to EPA,⁶ but requires a subset of higher-risk SPCC facilities—known as FRP facilities—to submit their preparedness Plans to the Agency.

Plans for FRP Facilities

In 1994, EPA established requirements for certain facilities to prepare and submit FRPs for responding to a worst-case discharge of oil and to a substantial threat of such a discharge (FRP Rule, see 40 CFR 112.20 and 112.21). These requirements apply to a subset of higher-risk SPCC facilities for which a discharge of oil could reasonably be expected to cause substantial harm to the environment (appendix A, figure A-1 shows the criteria for “substantial harm”).⁷ The number of FRP facilities EPA is aware of represents less than 1 percent of the estimated universe of approximately 640,000 SPCC-regulated facilities.⁸ All SPCC facilities self-certify whether the FRP requirements apply based on spill history, lack of adequate secondary containment, and proximity to drinking water intakes and/or environmentally sensitive habitats.

If the FRP requirements apply, the facility is required to prepare and submit an FRP to the appropriate EPA Regional Administrator for review

⁶ SPCC facilities must self-identify to EPA and the state per 40 CFR 112.4 within 60 days whenever a facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in 40 CFR 112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in 40 CFR 112.1(b), occurring within any 12-month period.

⁷ EPA developed the “substantial harm” criteria in response to directives in the Oil Pollution Act of 1990, which amended the CWA. The discharge of oil must be into or on U.S. navigable waters or adjoining shorelines.

⁸ EPA, Office of Emergency Management/Abt Associates, Inc., *Regulatory Impact Analysis for the 2008 and 2009 Final Amendments to the Oil Pollution Prevention Regulations (40 CFR 112): Volume I*, 2009.

and, in cases of “significant and substantial harm” facilities, approval. EPA also has the discretion to require an owner or operator of non-transportation facilities to prepare and submit an FRP to the Agency. The FRP must, for example, identify the individual with full authority to implement removal actions at the facility and the resources available to remove a discharge, and describe the training, equipment testing, and response actions of persons at the facility.⁹

Deadlines for SPCC Rule Compliance

During 2002–2010, EPA finalized several amendments to the SPCC Rule. According to EPA, the majority of post-2002 amendments were designed to streamline and tailor requirements. The October 2010 compliance date amendment finalized the dates by which regulated facilities must amend or prepare and implement SPCC Plans to comply with the revised SPCC regulations (appendix A, table A-1).¹⁰ Offshore drilling, production, and workover facilities (or any facility containing an offshore component), as well as onshore facilities that must submit FRPs, were required to amend or prepare and implement a Plan by November 10, 2010. If these types of facilities were in operation on or before August 16, 2002, they had to amend and implement the amended Plans by November 10, 2010. If these types of facilities were in operation after August 16, 2002, but before November 10, 2010, they had to prepare and implement an SPCC Plan by November 10, 2010. For all other facilities, EPA extended the compliance date to prepare or amend and implement an SPCC Plan until November 10, 2011. Most facilities that begin operation after November 10, 2011, will have to prepare and implement a plan before commencing operations; production facilities must prepare and implement a plan within 6 months of beginning operations.

EPA Inspections and Enforcement of SPCC and FRP Facilities

EPA headquarters (Office of Enforcement and Compliance Assurance (OECA) and Office of Solid Waste and Emergency Response (OSWER)) and the 10 regional offices implement EPA’s CWA Section 311 program. The headquarters offices are responsible for national program and enforcement policy, implementation, training, national coordination, and rulemaking. The regions implement and enforce the program by conducting inspections, providing outreach/compliance assistance, and pursuing enforcement actions to ensure that facilities comply with the SPCC and FRP regulations, and address noncompliance. EPA can only inspect the facilities it knows about because SPCC facilities are not

⁹ EPA’s requirements for FRPs can be found in 40 CFR 112.20(h) and 40 CFR 112, Appendix F.

¹⁰ 75 Federal Register 63093–103 (Thursday, October 14, 2010). At the time that we were preparing this report, EPA extended the SPCC Rule compliance date for owners or operators of farms from November 10, 2011, to May 10, 2013 (76 Federal Register 72120–24).

required to submit their Plans to EPA or otherwise identify themselves to the Agency.

During an inspection, EPA inspectors should confirm that the facility meets the applicability criteria for the SPCC Rule, has the procedures and equipment in place, and has an SPCC Plan containing the necessary information required under 40 CFR Part 112. For example, as of November 2011, all Plans must include facility diagrams, a description of employee training procedures, security measures, secondary containment structures, and recordkeeping procedures for facility inspections and tests. EPA regional oil program staff inspects the facility, reviews the SPCC Plan, and examines how the Plan is implemented at the facility. During fiscal years (FYs) 2007–2010, EPA’s regional offices inspected approximately 3,700 facilities for compliance with the SPCC Rule.

FRP facilities, which are also required to have SPCC Plans, are typically inspected by regional oil program staff and may also be subject to an unannounced exercise. For example, EPA regions are supposed to conduct triennial Government Initiated Unannounced Exercises at FRP facilities as outlined in national guidelines. These exercises are designed to randomly evaluate a facility’s ability to activate its response plan and respond to a simulated discharge incident. The unannounced exercises are limited to 10 percent of plan holders per region per year. During FYs 2007–2010, EPA regional offices inspected 946 FRP facilities; approximately 34 percent (320) of these inspections were unannounced exercises.

Inspectors identify deficiencies based on the Plan review and inspection, as well as whether the measures described in the Plans are implemented at the facility. During FYs 2007–2010, approximately 55 percent of the inspected facilities were identified as not in compliance with SPCC regulations at the time of inspection. Regions evaluate whether the violation warrants a penalty based on a variety of factors, including the seriousness of the violation and prior violation history at the facility. Based on these factors, EPA may issue an expedited settlement agreement (ESA) for minor and easily correctable SPCC violations, an administrative penalty order, or a referral to the U.S. Department of Justice for more serious violations.

Noteworthy Achievements

In September 2009, EPA’s OSWER published a strategic plan for the oil program. The strategic plan addresses data needs, compliance, and implementation of the oil spill program, and includes oil program measures. OSWER created several guidance documents for facility owners and operators, and made them available on its public website. The 2005 *SPCC Guidance for Regional Inspectors* provides insight to facility owners and operators on what inspectors look for during an

inspection, and guidance on compliance with the rule requirements. The 2010 *Facility Owner/Operator's Guide to Oil Pollution Prevention* outlines the information that must be included in SPCC Plans according to the amended SPCC Rule. The *Facility Response Planning Compliance Assistance Guide* and the *National Response Team's Integrated Contingency Plan Guidance*¹¹ are other documents published to assist facilities in complying with regulatory requirements.

EPA Regions 3 and 6 have used geographic information systems (GIS) to discover or verify the location and classification of SPCC and FRP facilities. In 2009, Region 3 conducted a GIS study to map known FRP facilities located next to sensitive areas, waters, and drinking water intakes. Region 3 identified eight “substantial harm” facilities that could pose a “significant and substantial harm” to the environment in the event of an oil spill. Region 3 plans to conduct inspections in FY 2012 to make a final determination as to whether these facilities should be reclassified as “significant and substantial harm” facilities.

Scope and Methodology

We conducted this evaluation in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objectives. We performed our review from August 2010 to June 2011.

We reviewed CWA Section 311, federal oil pollution prevention regulations, EPA policies and guidance documents, and relevant reports by the U.S. Government Accountability Office (GAO). We conducted interviews at EPA headquarters with OECA, Office of General Counsel, and OSWER personnel. We also interviewed oil program staff and managers from Regions 3, 5, 6, and 10. During our interviews, we used a standard set of questions that focused on the regions' respective oil programs, compliance with and enforcement of CWA Section 311, SPCC and FRP universes, oil prevention and response plans, inspections, and databases used to track facilities.

To evaluate individual regional oil programs, we sent information requests to all regional oil program managers in October 2010. Across the 10 regions, we collected information on regional guidance and policies for their oil programs,

¹¹ The *National Response Team's Integrated Contingency Plan Guidance* was developed and published by EPA in coordination with the U.S. Coast Guard, the Occupational Safety and Health Administration, the Office of Pipeline Safety (DOT), and Bureau of Ocean Energy Management, Regulation, and Enforcement (DOI). The guidance provides a mechanism to consolidate multiple plans that a facility may have prepared to comply with various regulations issued by the agencies above into one functional emergency response plan, i.e., the Integrated Contingency Plan (ICP).

factors used to target facilities for inspections, inspector resources, SPCC and FRP inspections and enforcement actions during FYs 2007–2010, and databases regions use to manage their oil pollution prevention programs. We also analyzed the national Enforcement Compliance History Online database to determine the number of CWA Section 311 enforcement actions with a violation pertaining to the SPCC Plan or FRP during FYs 2005–2010.

To gain a general understanding of Plan elements, we reviewed spill prevention and response Plans from 20 facilities located in EPA Region 6 (14 Plans were from facilities identified by the team and 6 were supplied by the region from its files). Region 6 informally requested Plans from these facilities and provided us with 15 SPCC Plans, 1 FRP, and 4 Integrated Contingency Plans (ICPs)¹² to review. Because our sample of facilities was not statistically valid, we cannot generalize the results of this analysis of 20 Plans to the program as a whole.

We reviewed the 20 plans for their quality and consistency based on the Office of Emergency Management’s (OEM’s) national inspection checklist to determine whether the Plans generally fulfilled the checklist criteria. The items in this checklist will be required of all plans in November 2011. The team focused on 38 items from the checklist to form the basis of its review of the quality and consistency of prevention Plans. Using requirements from 40 CFR 112, EPA’s Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j), interviews with regional programs, and our professional judgment, we categorized requirements as either “administrative” or “red flag” items. An EPA inspector would take special note of “red flag” items (e.g., lack of secondary containment or management approval of the prevention plan) during an inspection of an SPCC facility.

We did not make a determination regarding facilities’ compliance status. Compliance determinations are based on several considerations, such as content of Plans, inspections, and training records. We only reviewed the content of the Plans. The team did not verify the information within the Plans or conduct on-site inspections of the facilities that submitted Plans for our review.

Prior Audit Coverage

In 2008,¹³ GAO evaluated how EPA regions implement the SPCC program, the data EPA uses to implement and evaluate the program, and whether some states’ aboveground storage tank programs suggest ways to improve EPA’s program. GAO concluded that without more comprehensive data on the universe of

¹² 40 CFR 112.7 allows a facility to prepare a plan equivalent to an SPCC Plan, provided it meets all of the applicable requirements listed in 40 CFR 112.7 and is supplemented with a section cross-referencing the location of requirements from 40 CFR 112.7 and the equivalent requirements in the other prevention plan. Examples of “other prevention Plans” include FRPs and ICPs.

¹³ GAO, *Aboveground Oil Storage Tanks: More Complete Facility Data Could Improve Implementation of EPA’s Spill Prevention Program*, GAO-08-482, April 30, 2008.

regulated facilities, EPA cannot employ a risk-based approach to target inspections to those facilities that pose the greatest risks of oil spills into or upon navigable waters. Similarly, incomplete information prevents EPA from determining whether the SPCC program is achieving its goals. GAO recommended that EPA (1) analyze options for obtaining data on SPCC-regulated facilities, including a tank registration program; (2) develop guidance for EPA regions on how to better coordinate with states on SPCC issues; and (3) finish developing performance measures and obtain data to evaluate SPCC program effectiveness. As of January 2012, the status of these recommendations remained “open.”

Chapter 2

EPA Has Limited Oversight of Facilities Regulated by Its Oil Pollution Prevention Program

Although EPA has taken steps to improve its program to prevent oil spills from known facilities to waters of the United States, the Agency remains largely unaware of the identity and compliance status of the vast majority of CWA Section 311 regulated facilities. Effective program management requires that EPA know the identity and nature of the facilities it is responsible for regulating. The steps EPA has taken to improve the quality and consistency of SPCC Plans and FRPs include publishing guidance, providing training for inspectors and the regulated community, providing compliance assistance, and promoting consistent enforcement across EPA regions. EPA has also improved its ability to track individual CWA Section 311 violations and violators in a new national database. However, EPA still does not have knowledge of most of the facilities it is responsible for regulating. In addition, Agency data systems cannot exchange data with each other, and lack consistent and sufficient codes to categorize deficiencies and noncompliance. These data systems limitations prevent EPA from capturing the full details of a violator's history or identifying trends in compliance and enforcement. As a result, EPA cannot assess the success of steps it has taken to improve the quality and consistency of SPCC Plans, FRPs, or the oil pollution prevention program as a whole. Therefore, the Agency is unable to assess the degree to which its measures will help prevent future oil spills or mitigate their associated impacts.

EPA's Limited Knowledge of Facilities Regulated by the Oil Pollution Prevention Program Hinders Oversight

EPA's lack of knowledge of the identity of the vast majority of regulated facilities is a critical deficiency in its management of its CWA Section 311 program. EPA cannot develop a complete inventory of SPCC facilities because SPCC regulations do not contain a formal mechanism to collect data about facilities, and most regulated facilities are not required to identify themselves to EPA.

Although EPA estimated that approximately 640,000 facilities are potentially subject to regulation under the SPCC Rule, the Agency does not have information on the owners and locations of the vast majority of these facilities. OEM estimates that prior to the launch of the National Oil Program Database, the individual regional SPCC/FRP databases contained fewer than 25,000 records for facilities regulated by CWA Section 311 (representing approximately 4 percent of the estimated SPCC universe). Region 6 recently discovered 45 previously unknown SPCC-regulated oil and gas production facilities in New Mexico while conducting inspections at known facilities. In some cases, SPCC facilities are identified only after an oil discharge.

Only the SPCC facilities also covered under the FRP requirements are required to report their presence to the Agency by submitting their FRPs for review. EPA regions reported that they have received a total of 4,897 FRPs. However, regions admit they are still missing Plans for many FRP facilities or have not received updated Plans. Region 10 staff and managers said 450–500 FRP facilities operate in their region. They estimate that an additional 225–250 unknown facilities also operate in the region, but have not submitted Plans for review. At the time of our evaluation, Region 6 was aware of six “significant and substantial harm” FRP facilities in New Mexico that have changed ownership but have not submitted updated Plans to the Agency.

As of May 2011, OEM staff said EPA has been unable to address the 2008 GAO recommendation to analyze options for obtaining key data about the regulated universe. Other priorities, such as the 2010 BP Deepwater Horizon oil spill and rulemaking efforts for Subpart J of the National Contingency Plan and the SPCC Rule, delayed efforts to address the recommendation. EPA reported that it has made strides in working with the states, the U.S. Department of Commerce, and the U.S. Department of Agriculture in identifying information on facilities during the regulatory action development process.

EPA regions have attempted to increase their knowledge of SPCC and FRP facilities by using state aboveground storage tank databases, industry databases (e.g., Dun and Bradstreet), and other federal agency databases. About half of U.S. states and territories have databases with information about registered tanks operating in their individual states. State tank registration programs may have more information than EPA about tanks and facilities located in their states, but state databases are incompatible with EPA’s databases for identifying regulated facilities. Other challenges to using state databases include states using different facility identification numbers, not tracking information about tanks that store animal fat and vegetable oil, or having higher capacity thresholds than the federal SPCC/FRP program (which would not capture the entire tank universe regulated by EPA). The manner in which states categorize the product a tank stores is sometimes not detailed enough to determine whether the facility should be regulated under the SPCC/FRP programs.

Compiling a list of facilities that come under the SPCC Rule is complicated because limited or incomplete facility data lead to difficulties in determining the facility’s proximity to U.S. navigable waters, the type and capacity of product stored, and facility type (i.e., production or storage). For example, Region 9 staff stated that a facility could assert that the CWA Section 311 regulations do not apply to it because it believes there is no proof that the stream or waterway that could be impacted by a spill is a water of the United States. The burden on EPA regions to prove a spill may discharge to a water of the United States may be resource intensive and may hinder enforcement activities.

EPA's Limited Knowledge Prevents It from Assessing the Overall Effectiveness of the Oil Pollution Prevention Program

EPA has taken a number of steps to improve the quality and consistency of prevention and response Plans. EPA has tailored and streamlined regulatory requirements for certain qualified facilities, published guidance on preparing and implementing prevention and response Plans, provided compliance assistance at a facility owner/operator's request, and pursued enforcement actions for violations. EPA has also reviewed and approved FRPs from facilities as required by the regulations. Further, to help ensure that inspections are conducted in a uniform manner, inspectors use standardized SPCC and FRP inspection checklists. EPA is currently drafting a national enforcement and implementation strategy for its oil pollution program (SPCC and FRP). EPA tracks the number of SPCC and FRP facilities that return to compliance each year as part of the program's performance measures. However, EPA's limited knowledge of facilities regulated by the oil pollution prevention program prevents the Agency from assessing the overall effectiveness of the program. EPA cannot determine the extent to which these steps have improved the quality and consistency of prevention and response plans.

EPA Cannot Determine the Success of Its Steps to Enhance Quality and Consistency of Plans

OEM has taken several steps to improve the quality and consistency of SPCC Plans prepared by facilities. OEM has published guidance documents describing the regulatory requirements of the SPCC/FRP programs to owners and operators of regulated facilities. According to EPA, it utilizes its website, outreach seminars (through conferences and webinars), and training sessions as the principal means of communication with these facilities. Because of the limited knowledge about facilities regulated by the oil pollution program, EPA cannot direct its guidance and outreach efforts to more than 96 percent of the estimated regulated facility owners and operators.

While EPA can measure the effectiveness of these efforts for known SPCC facilities, EPA cannot assess the overall effectiveness of its oil pollution prevention program for the regulated universe. EPA can only assess the quality or consistency of prevention and response plans at known facilities. SPCC facilities do not have to submit their SPCC Plans to EPA for review and approval. EPA reviews SPCC Plans only as part of an official inspection or enforcement investigation. EPA has only inspected 3,700 of the estimated 640,000 SPCC facilities (less than 1 percent) in the past 4 years nationwide. EPA filed more than 1,000 CWA Section 311 enforcement actions against facilities during FYs 2005–2010 for failure to have an adequate SPCC Plan. These actions represent roughly 53 percent of all CWA Section 311 enforcement cases EPA pursued during this time frame.

EPA eliminated a measure of accountability when it streamlined requirements for SPCC Plans from facilities that satisfy criteria listed in 40 CFR 112.3(g) pertaining to reportable spill history and oil storage capacity. Facilities meeting these criteria are no longer required to have their SPCC Plans certified by a professional engineer, which provided an element of accountability that the Plan contained information required by 40 CFR 112.

EPA has a better idea of the effectiveness of its efforts to enhance the quality and consistency of FRPs because facilities must submit their plans to the Agency for review. Each facility self-certifies that it is an FRP facility and the degree of harm it poses to sensitive environments and drinking water supplies (appendix A, figure A-1). According to EPA, regional staff review all FRPs; however, only plans from “significant and substantial harm” FRP facilities must be approved by EPA.

In our review of 20 oil prevention Plans (which included SPCC Plans, FRPs, and ICPs), we observed that the overall quality and consistency of the Plans varied. The facility’s initial date of operations, according to EPA, is a key parameter inspectors use to determine the date by which facilities had to comply with regulations (i.e., prepare or amend an existing plan). Only six plans (30 percent) contained this key parameter. Some Plans were missing administrative items, but more than half (11 of 20) were missing significant components, e.g., no evidence that facility management approved the Plan, no listing of who was accountable for discharge prevention at the facility, missing or incomplete facility diagrams, and no information addressing bulk storage containers or secondary containment. Although we did not review the 20 Plans for compliance with regulations, these Plans likely needed to be amended by November 2011 to be in compliance with the SPCC Rule amendments.

EPA Is Taking Steps to Promote Consistent Enforcement

EPA has taken a number of steps to increase consistency in regional enforcement decisions to address similar types of noncompliance. Both OEM and OECA hold monthly conference calls with regional oil program technical staff, program managers, and enforcement staff and managers. To promote consistent interpretation of the regulations among regions, OEM developed a guidance document and provides mandatory 40-hour training for regional SPCC and FRP inspectors. To promote consistent enforcement, OECA published a civil penalty policy for the CWA Section 311(b) and 311(j) programs. Additionally, OECA is working with OEM to develop an enforcement strategy for the oil program.

As required by EPA Order 3500.1, OEM developed a training program specific to the SPCC and FRP programs for regional inspectors, which includes requirements for specialized training. Some of the specialized training is provided during monthly calls. OEM also prepared a standardized national inspection checklist for inspecting SPCC facilities.

All 10 regions use the 2005 *SPCC Guidance for Regional Inspectors*, which OEM issued to make inspections and interpretation of the regulations more consistent among regions. However, inconsistencies in what the guidance document outlines versus what the rule requires will remain until OEM revises this guidance to reflect recent amendments to the SPCC Rule. Six of the 10 regions also told us that they supplement the guidance with regional-level standard operating procedures for program implementation.

The recent oil spills in the Gulf of Mexico and Michigan caused EPA to delay several policies in development at the time, including revisions to the national inspection checklist for the SPCC program, the SPCC guidance revisions, and finalization of the draft national inspection targeting strategy. OECA and OSWER are evaluating the development of an enforcement strategy for the oil pollution prevention program (SPCC and FRP), including targeting of inspections and enforcement. OECA and OSWER said they are continuing work on the enforcement strategy through summer 2011.

To bring more facilities back into full compliance, 9 of the 10 EPA regions have approval from headquarters to issue ESAs for certain SPCC violations.¹⁴ Eight of the 10 EPA regions also have approval from EPA headquarters to issue ESAs for oil spills/discharges. From FY 2005 to FY 2010, EPA resolved approximately 72 percent of CWA Sections 311(j) and 311(b) violations with ESAs.

During the course of the evaluation, the Office of Inspector General (OIG) noted that one EPA region had fewer FRP enforcement actions, and we included this information in the draft report. In response, this region clarified its position regarding FRP enforcement options, and OECA agreed with the region's assessment of enforcement authority.

EPA Cannot Effectively Establish National Trends in Compliance History for Known SPCC Facilities

EPA cannot effectively track and report CWA Section 311 violations and violators. EPA currently lacks a comprehensive national oil program database that incorporates data maintained in regional databases and that exchanges data with other EPA (enforcement and compliance) databases. EPA manages its oil pollution prevention program by tracking CWA Section 311 violations and violators through various national and regional-level databases. Improved capabilities of these databases should allow EPA to better determine national trends and establish full and detailed compliance histories of inspected facilities, their violations, and the enforcement actions taken against them.

¹⁴ The ESA process is a voluntary tool that some regions use to quickly address small, easily correctable violations; other regions may use different tools to achieve the same purpose.

EPA's existing databases can produce a limited compliance and enforcement history for SPCC and FRP facilities because its databases only track and monitor known facilities. Regions 3, 5, 6, and 10 have regional databases to manage and track known SPCC and FRP facilities operating in their respective regions; these databases often contain more information than what is reported to national databases. Seven of the 10 regions reported that they can use their region-specific database to produce a compliance history for SPCC and FRP facilities.

OEM created a national Microsoft Access database specifically for the oil program in 2005, which 7 of 10 regions use to track compliance and certain types of enforcement actions. According to the Agency's responses to our information request, eight regional oil programs also use the Integrated Compliance Information System (ICIS), the Agency's national database for tracking compliance and enforcement actions for many programs, including the CWA Section 311 program. At the time of our evaluation, these two national databases did not exchange information. Regions said they could avoid duplicative data entry and management efforts if the national Access database was able to exchange data with ICIS after the Access database was converted to an Oracle platform.

OEM personnel stated that the transition from the Access database to the Oracle platform occurred in mid-August 2011 (after we released our draft report to the Agency). This first version of the National Oil Database does not exchange data with ICIS, but OSWER and OECA anticipate that it will be capable of doing so in FY 2012. This capability should eliminate duplicative data entry.

The National Oil Database does not uniformly specify the deficiency or violation being addressed. Although OEM records deficiencies in a comment field, the quality and consistency of data entered by regional inspectors varies. OEM has not established codes that would allow the Agency to report trends in deficiencies and reasons for facilities' noncompliance. Deficiencies could include missing SPCC Plan or FRP requirements, or other missing regulatory requirements such as lack of secondary containment. As a result, we were unable to determine the quality or consistency of Plans from OEM's database. At the time of the evaluation, the database could not identify trends in compliance that would help with program management decisions (e.g., industries on which to focus compliance assistance efforts).

SPCC and FRP facility compliance and enforcement history is limited to the information entered into EPA's databases. Although OECA's Office of Compliance said it issues annual plans to improve data quality, existing enforcement data in ICIS is incomplete. We found that 209 CWA Section 311 enforcement case records (approximately 11 percent) from FYs 2005–2010 had no information in the "violations" field. Only Region 10 included this information in the records for each of its enforcement cases. We also found that Region 7 inconsistently categorized the "Laws and Section" used to pursue its SPCC and

FRP enforcement cases. For 22 of Region 7's enforcement cases (approximately 12 percent of its total enforcement cases during FYs 2005–2010), the “Case Summary” field contained additional information not included in the “Laws and Section” field. Incomplete or inconsistent enforcement data entry further limits EPA's ability to produce accurate compliance histories for known facilities.

Conclusion

EPA lacks reasonable assurance that oversight efforts for the CWA Section 311 program effectively prevent and improve the response to future oil spills or mitigate the associated impacts. The Agency has provided guidance to owners and operators of SPCC and FRP facilities, but does not know how effective that guidance has been in improving quality and consistency of Plans with federal regulations. Because the SPCC regulations do not require facilities to notify EPA that they are regulated, the Agency cannot identify every facility in the regulated universe. While EPA has recently transitioned to using a national oil program database, the database does not yet exchange data with other EPA databases and can only produce a limited compliance history for the known facilities. As a result, EPA cannot identify trends in compliance that would help with program management decisions. Addressing these limitations will improve EPA's management of the CWA Section 311 program.

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response, in consultation with the Assistant Administrator for Enforcement and Compliance Assurance:

1. Improve oversight of facilities regulated by EPA's oil pollution prevention program by:
 - a. Developing procedures for updating and issuing new guidance to ensure the regulated community has access to the most current guidance.
 - b. Implementing a risk-based strategy toward inspections that identifies unknown SPCC and FRP facilities, and directs inspection resources toward facilities where the potential for spills poses the greatest risks to human health and the environment.
 - c. Consistently interpreting regulations and EPA's authority to enforce regulations.
 - d. Producing a biennial public assessment of the quality and consistency of SPCC Plans and FRPs based on inspected facilities.

2. In support of improving oversight, establish a national oil program database that:
 - a. Contains a detailed history of compliance and inspections for facilities subject to the SPCC Rule.
 - b. Uses comprehensive deficiency and/or compliance codes specifying why a facility was not in full compliance in order to identify and track national trends.
 - c. Ensures consistent data entry across all 10 EPA regions.
 - d. Exchanges data seamlessly with the Agency's existing compliance and enforcement databases.

Agency Response and OIG Evaluation

The Assistant Administrator for Solid Waste and Emergency Response and the Assistant Administrator for Enforcement and Compliance Assurance responded to our draft report on September 6, 2011 (appendix B). The Agency stressed that, given the challenges associated with the magnitude of the regulated universe and with limited resources available, the oil pollution prevention program has acted through comprehensive rulemaking and program implementation to ensure that facilities work to prevent and prepare for oil discharges to the waters of the United States. While OSWER agreed that additional improvements and efficiencies could be found, it believes that it is implementing an effective program to prevent and mitigate oil spills, given its "limited resources."

The Agency agreed that if it had data on a larger percentage of the universe, its ability to capture and track information on violators and violations would be improved. OSWER and OECA are working together to improve communications between their data systems to ensure a complete and accurate record of EPA actions. The Agency also agreed that it should examine Plans prepared after the implementation of recent rulemaking and guidance, which was enacted to enhance the quality and consistency of Plans, to determine whether these Plans are measurably different.

The Agency's comments and our evaluation and responses are in appendices B through E. Appendix D only includes the Agency's comments and not its technical edits, which were incorporated into the report where appropriate. Region 5's separate response, sent July 29, 2011, is located in appendix E, but does not include the attachment included in its response, as it was determined to be enforcement sensitive and not to be released to the public.

We appreciate the Agency's in-depth response to the report and the additional clarification the Agency provided on the nuances of this program. We

acknowledge that the needs of the oil pollution prevention program may exceed the resources EPA currently assigns to the program. However, in our opinion, EPA should improve oversight of the oil pollution prevention program. Where appropriate, we have incorporated the Agency's technical comments into the body of the report. Our recommendations remain largely unchanged, except for the addition of a recommendation, suggested by the Agency, for EPA to assess the quality and consistency of Plans.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	15	Improve oversight of facilities regulated by EPA's oil pollution prevention program by: <ol style="list-style-type: none"> a. Developing procedures for updating and issuing new guidance to ensure the regulated community has access to the most current guidance. b. Implementing a risk-based strategy toward inspections that identifies unknown SPCC and FRP facilities, and directs inspection resources toward facilities where the potential for spills poses the greatest risks to human health and the environment. c. Consistently interpreting regulations and EPA's authority to enforce regulations. d. Producing a biennial public assessment of the quality and consistency of SPCC Plans and FRPs based on inspected facilities. 	U	Assistant Administrator for Solid Waste and Emergency Response, in consultation with the Assistant Administrator for Enforcement and Compliance Assurance			
2	16	In support of improving oversight, establish a national oil program database that: <ol style="list-style-type: none"> a. Contains a detailed history of compliance and inspections for facilities subject to the SPCC Rule. b. Uses comprehensive deficiency and/or compliance codes specifying why a facility was not in full compliance in order to identify and track national trends. c. Ensures consistent data entry across all 10 EPA regions. d. Exchanges data seamlessly with the Agency's existing compliance and enforcement databases. 	U	Assistant Administrator for Solid Waste and Emergency Response, in consultation with the Assistant Administrator for Enforcement and Compliance Assurance			

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

SPCC Rule Compliance Dates and SPCC Facility Substantial Harm Criteria

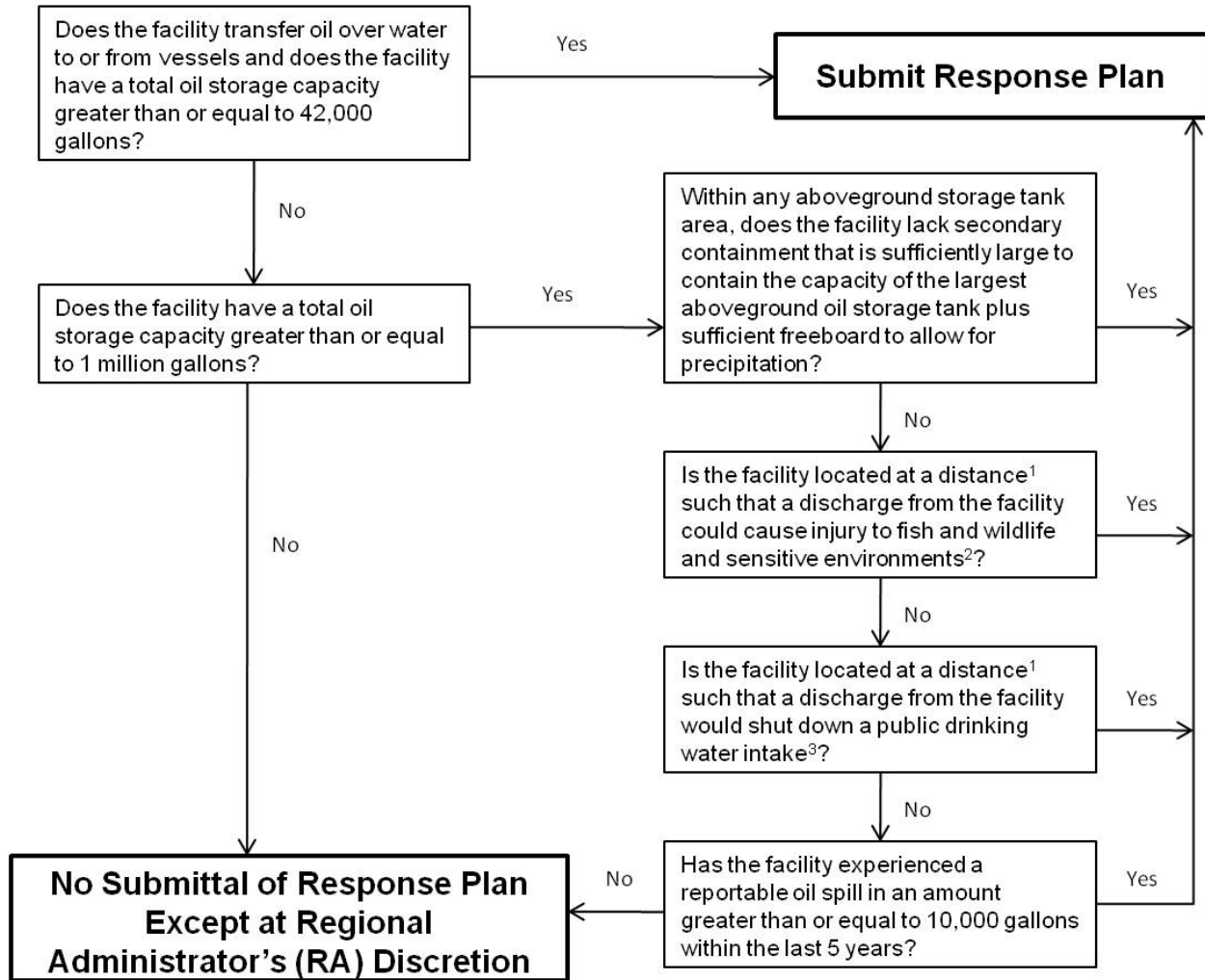
Table A-1: Compliance dates for the SPCC Rule

SPCC facilities that must meet the November 10, 2010, compliance date	
<i>A drilling, production or workover facility, including a mobile or portable facility, located offshore or with an offshore component; or an onshore facility that is required to have and submit FRPs starting operation...</i>	<i>Must...</i>
On or before August 16, 2002	Maintain its existing SPCC Plan Amend and implement the amended SPCC Plan no later than November 10, 2010
After August 16, 2002 through November 10, 2010	Prepare and implement an SPCC Plan no later than November 10, 2010
After November 10, 2010 (excluding production facilities)	Prepare and implement an SPCC Plan before beginning operations
After November 10, 2010 (production facilities)	Prepare and implement an SPCC Plan within 6 months after beginning operations.
SPCC facilities that must meet the November 10, 2011, compliance date	
<i>A facility, including a mobile or portable facility, starting operation...</i>	<i>Must...</i>
On or before August 16, 2002	Maintain its existing SPCC Plan Amend and implement the amended SPCC Plan no later than November 10, 2011
After August 16, 2002 through November 10, 2011	Prepare and implement an SPCC Plan no later than November 10, 2011
After November 10, 2011 (excluding production facilities)	Prepare and implement an SPCC Plan before beginning operations
After November 10, 2011 (production facilities)	Prepare and implement an SPCC Plan within 6 months after beginning operations.

Source: EPA Office of Emergency Management.

Figure A-1: Process to determine whether an SPCC facility meets the criteria for substantial harm and needs to prepare an FRP

Flowchart of Criteria for Substantial Harm



¹ Calculated using the appropriate formula in Attachment C-III to 40 CFR 112, Appendix C, or a comparable formula.

² For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to U.S. Department of Commerce, National Oceanic and Atmospheric Administration's, *Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments* (59 FR 14713, March 29, 1994) and the applicable Area Contingency Plan.

³ Public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2.

Source: 40 CFR 112, Appendix C, Attachment C-I.

Agency Response From OSWER and OECA

September 6, 2011

MEMORANDUM

SUBJECT: Environmental Protection Agency's (EPA) Response to OIG's Draft Report: "*EPA Needs to Improve Management Its Oil Pollution Prevention Program*" Project No. 2010-1360

FROM: Mathy Stanislaus
Assistant Administrator for Solid Waste and Emergency Response (OSWER)

Cynthia Giles
Assistant Administrator for Enforcement and Compliance Assurance (OECA)

TO: Wade Najjum
Assistant Inspector General for Program Evaluation

We appreciate the opportunity to comment on the Office of Inspector General (OIG) draft report titled, "*EPA Needs to Improve Management of Its Oil Pollution Prevention Program*" (Project No. 2010-1360), dated June 29, 2011. Ensuring that EPA's Oil Pollution Prevention Program is as effective as it can be is an ongoing agency focus and we appreciate the IG's review and recommendations for strengthening this program.

The recent spill events cited in the IG's report certainly highlight the significant harm and expense that can be inflicted by oil spills. However, we are concerned that the spills cited in the report will be inaccurately attributed to a lack of EPA action when that is not the case. Spill prevention and preparedness for pipelines is under the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration regulatory jurisdiction and the BP Deepwater Horizon spill is from a facility seaward of the coastline in Bureau of Ocean Energy Management, Regulation and Enforcement regulatory jurisdiction. As a result, the use of these examples may imply that EPA's Oil Pollution Prevention Program was inadequate in preventing these devastating spills when in reality the program was not applicable to these facilities. We suggest the IG cite different spills or specifically state in its report that the spills cited are not from facilities under EPA regulatory jurisdiction for prevention nor do they reflect problems with EPA's program.

OIG Response: We replaced the original spill examples with examples from facilities regulated by EPA under its CWA Section 311 program.

When oil spills into waters or onto adjoining shorelines it can have significant, harmful impacts on the environment, human health, and economic activity. EPA's federally administered Oil

Pollution Prevention Program is designed to prevent oil spills from non-transportation-related on-shore, and certain offshore, facilities and to assure that oil facility personnel are prepared to respond if a spill does occur. Given the challenges associated with the magnitude of the regulated universe with limited resources available, EPA's Oil Pollution Prevention Program has acted through comprehensive rulemaking and program implementation to ensure facilities work to prevent and prepare for oil discharges to the waters of the United States.

While we share most of the IG's ultimate recommendations on how to make this program more effective, after reviewing the report, we have identified a number of areas which, in our view, contain inaccuracies and where we disagree with certain conclusions reached. We have provided more detailed comments in Attachment A to this memorandum and have also provided a red line/strike out version of the report in Attachment B for your consideration.

OIG Response: We clarified certain statements in the report to address EPA's concerns.

The report concludes that EPA has not implemented a program that can effectively prevent oil spills or mitigate the effect of those spills and that we lack reasonable assurance that oversight efforts effectively prevent future oil spills. While we agree that additional improvements and efficiencies can be found, OSWER believes EPA is carefully implementing a program to prevent and mitigate oil spills, given the resources available.

The draft report does not adequately account for, or put into context, all the activities that EPA performs to manage and implement the program given the available resources. The Office of Emergency Management's (OEM) Oil Program Strategic Plan (Sept 2009), national training programs, national program guidance/policy documents, national policies and procedures, and national program measures (approved by OMS and currently implemented in the oil program) form the foundation for a centralized program and its continued evaluation. We will continue to examine this foundation for continuous improvement process changes. Almost 650,000 facilities are covered by the Oil Pollution Prevention Program and EPA has allocated resources to particularly target those facilities with the highest potential impact and risks to water, while at the same time allocating remaining resources to cover the large remaining universe.

OIG Response: Although a detailed examination of program resources was beyond the scope of this evaluation, we recognize the challenges the Agency faces in regulating more than an estimated 640,000 facilities, most of which are unknown to the Agency. We agree that OEM's Oil Program Strategic Plan, training programs, guidance documents, and program measures create the basis for a centralized program. We included the 2009 Oil Program Strategic Plan as a noteworthy accomplishment and referenced the national program measures in the body of the report.

As a result, we view the results of these program management activities as a success relative to our resource allocation. We agree that steps towards program improvement are warranted and intend to take steps to improve the quality and consistency of plans.

We agree that better universe data would improve our ability to capture and track information on violators and violations. We also agree that an examination of plans prepared after the implementation of recent rulemaking and guidance enacted to enhance the quality and consistency of plans is needed to determine whether there is a measurable difference.

OIG Response: Based on this comment, as well as others, we added a recommendation that the Agency produce a biennial assessment of the quality and consistency of SPCC Plans and FRPs based on inspected facilities.

While we appreciate OIG's acknowledgement of our aggressive efforts to improve the quality and consistency of prevention and response plans, OSWER believes that the data EPA has, combined with the data available at the state and local levels, provides sufficient information to understand the scope of the regulated universe, target facilities and industry sectors for inspections and effectively manage the program. OIG's report correctly recognizes the challenges associated with compiling a list of facilities, and how this data translates to program effectiveness. OSWER and OECA are working together to improve communications of our data systems to ensure a complete and accurate record of EPA actions.

We have concerns with the review and analysis of the twenty 40 CFR 112 plans obtained in Region 6. EPA is concerned that the plan reviewers may not have appropriately considered some of the more complex compliance date implications and therefore may not have reviewed the plans for the correct plan requirements leading to inaccurate conclusions. The inconsistencies found by the OIG may be related to whether the plans that were reviewed were developed before or after EPA's efforts to enhance the quality and consistency of plans and their actual regulatory requirements relative to the compliance date. EPA fully expects wide variations in plans across the extremely wide range of industry sectors subject to the requirements and owners and operators are given considerable flexibility to tailor their plan to their unique needs. Now that our regulatory work is complete (and guidance work nearly so), bringing facilities into compliance with plan requirements is critical to oil spill prevention and preparedness.

OIG Response: The intent of this Plan review was to check the quality and consistency of Plans for requirements under 40 CFR 112. We adjusted the report to address the concerns noted here.

We have concerns about the report's draft conclusion that there is inconsistent interpretation of EPA's enforcement authority by the agency. We respectfully disagree that there is any inconsistency and would like to discuss this issue further with OIG project personnel. As we have explained, OECA has confirmed that there is a consistent understanding of FRP enforceability and we will continue to take enforcement actions to ensure compliance with these important response planning requirements.

OIG Response: At the time of our evaluation, one region had an inconsistent interpretation of EPA's enforcement authority. EPA corrected this inconsistency after receiving our draft report, and we revised the presentation of this issue based on the additional information provided in the Agency's responses.

In summary, the draft report's main recommendations focus on national program centralization, national database coordination, and outreach. Nearly all of the draft report recommendations are currently being implemented by current oil pollution prevention program initiatives. As a result, while we agree that more can be done to improve this program and with most of the corrective actions recommended, we believe that certain aspects of this draft report may be inaccurate and misleading and are suggesting certain corrections.

OIG Response: We made changes as appropriate. Although the Agency's current initiatives are noteworthy, our recommendations bring focus to improvements the Agency has not yet undertaken.

We appreciate your efforts and your consideration of our comments as you develop the final report. If you have any questions or would like to set up a time to discuss these issues, please feel free to contact Craig Matthiessen in the Office of Emergency Management, OSWER at (202) 564-8016 and Edward Messina in the Office of Compliance, OECA at (202) 564-1191.

Attachments

Agency Response From OSWER and OECA: Attachment A

OIG NOTE: The page numbers used in the Agency's response refer to those in the draft report; during the editing process, these page numbers may have changed.

EPA's major comments are detailed below by section and chapter. Specific wording edits are shown in redline/strike out on the draft Report (see Attachment B). [OIG Note: Attachment B is included in appendix D of this report]

"At a Glance" Section

EPA agrees with OIG's analysis that EPA should seek more data about the regulated universe and should make use of the findings of past inspections better.

This draft report fails to recognize the level of effort and resources required to manage both the extremely large scope of the program and the large regulated universe (640,000 facilities for SPCC alone).

OIG Response: The OIG was limited in the scope of its evaluation objectives by Congress. However, we amended this section and other areas of the report where appropriate to better reflect steps the Agency has taken to improve the program.

Under "What We Found"

The opening sentence: "EPA has not implemented a program that can effectively prevent oil spills to navigable waters or mitigate the effect of those spills."

While we agree improvements can be made, especially in certain data areas, we respectfully disagree with a conclusion that oil spills cannot be effectively prevented or mitigated under current program actions.

OIG Response: We amended the opening sentence to better communicate the conclusion that the Agency's management of the program is limited to those facilities it is aware of, and that the Agency is largely unaware of the vast majority of regulated facilities.

The last two sentences:

"Overall, EPA cannot assess the success of steps it has taken to improve the quality and consistency of SPCC Plans, Facility Response Plans, or the oil pollution prevention program as a whole. As a result, EPA is unable to provide a reasonable assurance that its measures can prevent future oil spills and mitigate their associated impacts."

The first sentence may be partially true; we've yet to embark on a significant effort to do so. And as discussed later, certain data elements may help us gauge the significance of efforts to improve the quality and consistency of Plans. EPA agrees that an assessment of Plans to assess

the consistency at a national level (recognizing that this sample may be limited) is appropriate. Consequently, without an assessment, it cannot be concluded EPA is unable to provide a reasonable assurance that its measures can prevent future oil spills and mitigate their associated impacts.

OIG Response: We revised this section and other parts of the report to better reflect our conclusion that the Agency’s program is limited to the facilities it knows about and that the Agency is unaware of the vast majority of facilities estimated to be regulated by the SPCC regulations. We also added a recommendation for the Agency to assess the quality and consistency of Plans.

See also comments on the SPCC and FRP Plan review methodology regarding data quality.

OIG Response: We addressed the Agency’s specific concerns about the Plan review methodology.

Under “**What We Recommend**”

The recommendations do not directly address the statements in the findings noted above and in the body of the draft report. The draft report also does not recognize or account for the limited resources¹ relative to the extremely large regulated universe or the magnitude of program elements managed using these resources.

The oversight, management and implementation of the SPCC and FRP programs are only a portion of the overall management activities that make up the oil spill prevention program. The non-SPCC and -FRP oil activities include but are not limited to:

- Area planning/GIS work,
- Drills and exercises,
- Cost recovery,
- Legal support,
- Enforcement support,
- Response activities (takes priority over all other elements),
- Response infrastructure,
- Outreach activities and support,
- Administrative support, and
- Personnel management.

OIG Response: We revised the report recommendations to address the Agency’s comment above. We also included the Agency’s concerns about the limited resources and staff relative to the large regulated universe in the report as part of its response.

The “At a Glance” page recommends: “a centralized and comprehensive CWA Section 311 program that includes standard operating procedures for updating policies and guidance.” Similar language appears on page 19. OSWER is unclear if the OIG “centralized” program recommendation means removing this program from EPA’s normal regional structure. If so, we disagree. If something else is meant, more specifically on why the existing centralized program

¹ The Oil Program has 83.2 FTE to implement the entire oil program, not just the SPCC and FRP elements of the program.

is inadequate, is needed. In particular, the program already has SOP's for policy and guidance development and our responses to recommendations reflect this.

OIG Response: Our revised recommendations no longer include the reference to a “centralized and comprehensive program.” We revised the “At a Glance” to reflect the final recommendations.

Chapter 1

Page 1: Background:

The three example discharge events shown here are not from facilities that fall within the scope of the SPCC and FRP program. Pipelines are under PHMSA jurisdiction and the BP Deepwater Horizon spill is from a facility seaward of the coastline in BOEMRE jurisdiction. As such, these examples are not subject to EPA's responsibility in 40 CFR 112 and are misleading to the public. If it is necessary to establish the magnitude and concern for oil spills and relevance to the scope of the study, then OIG should provide examples of recent spills from EPA regulated fixed facilities where either non-compliance with oil spill prevention program requirements failed to adequately prevent a spill or where spill preparedness was not effective to minimize harm to the environment and relate them to the quality and consistency of Plan requirements or to the tracking of violations and violators.

OIG Response: We replaced the original spill examples with examples from facilities regulated by EPA under its CWA Section 311 program.

Although the oil spill prevention and preparedness responsibilities for the three facilities discussed above (the pipeline spills on the North Slope and in Michigan and the BP Deepwater Horizon spill) are not EPA's, EPA and Coast Guard share the lead responsibility for emergency response for the federal government. However, EPA's emergency response program is not within the scope of this draft report.

Discussions with response personnel in Region 4 over the past five years suggests for those spills which resulted in deployment of an EPA On-Scene Coordinator (OSC) for emergency response, the most common source of the oil discharge was transportation-related, and the largest spills are typically from pipelines.

Page 2: CWA Section 311 and Federal Responsibilities

Please see the draft report text for corrections regarding the statute and Executive Orders.

OIG Response: See appendix D for an explanation of how we addressed this comment.

Page 3: EPA's Oil Discharge Prevention Program

Please see the draft report text for corrections regarding the SPCC regulation. Rather than stating that “EPA managers and staff said ...” the oil pollution program is not delegable to states, it would be more accurate in the draft report to cite the statute or alternatively state: “The CWA does not specifically authorize delegation of the oil spill prevention program to states and tribes.”

According to EPA’s Office of General Counsel (OGC), Congress, in enacting the CWA, did not provide the President with the necessary statutory authority to delegate this program to the States.

OIG Response: We removed the reference to “EPA managers and staff” and revised the sentence to reflect statutory authority.

Page 3: under Plans for SPCC Facilities

See similar comment in the FRP section below. EPA recommends that there be an overview of the number, scope and types of facilities regulated by the SPCC rule to put in context the scope of the draft report. This data is on page 4 and should be moved to page 3.

EPA recommends that a footnote be added to explain that SPCC facilities must self-identify to EPA and the State per §112.4 within 60 days whenever a facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in §112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in §112.1(b). See 40 CFR 112.4.

OIG Response: We incorporated EPA’s comments about the scope of the regulated universe and under which circumstances a facility must self-report to EPA into the report.

Page 3: under Plans for FRP Facilities:

EPA recommends an overview of the number, scope and types of facilities regulated by the SPCC rule to put in context the scope of the draft report. This data is on page 4 and should be moved to page 3.

OIG Response: We incorporated EPA’s comments about the scope of the regulated universe into the report.

Page 4: under Plans for FRP Facilities:

The sentence that reads: “All SPCC facilities self-certify whether the more stringent rules and regulations apply based on spill history, lack of adequate secondary containment, and proximity to drinking water intakes and/or sensitive habitats” should be edited as noted in Appendix B.

The FRP requirements should not be classified as “more stringent.” The purpose of the FRP requirements is planning and preparedness for a *response* to an oil discharge which is different from the SPCC requirements which are to *prevent* a discharge.

Additionally, the FRP requirements are contained within the same oil pollution prevention regulation (40 CFR 112).

OIG Response: We edited statements in this section based upon EPA’s comments.

Page 4: under Deadlines for SPCC Rule Compliance:

See edits in this section of the draft report (in Appendix B) to make the text consistent with language in the compliance date extension amendment rule: “If your drilling, production or workover facility, including a mobile or portable facility, is offshore or has an offshore component; or your onshore facility is required to have and submit a Facility Response Plan...”

The draft report should also address facilities coming into operation after November 2011. These facilities must have a Plan before commencing operations (with the exception of production facilities which have an extra six months). Failure to include this information in the draft report provides an incomplete story regarding the compliance date.

OIG Response: We clarified and included statements in this section of the report regarding the compliance date extension amendment rule to address EPA’s comments.

Bottom of Page 4, top of Page 5 and at the end of the first paragraph: EPA Inspections of and Enforcement at SPCC and FRP Facilities:

OIG should consider adding a discussion of OEM’s Strategic Plan (Sept 2009) for the oil program and the oil program measures in the draft report. The strategic plan addresses data needs, compliance, and implementation of the oil spill program and potentially provides considerable background information for this draft report.

OIG Response: We added information about OEM’s 2009 Strategic Plan to the “Noteworthy Achievements” section of the report.

Any discussion of the strategic plan should follow the general discussion of the oil inspection program. Also see edits to the text in the draft report (in Appendix B). In addition, the OIG should consider adding to the report a discussion of EPA’s current targeting practices (the national draft inspection targeting policy) that regional inspectors use to identify SPCC facilities for inspection. It may also be appropriate to mention EPA’s other facility identification and targeting practices. EPA uses state databases, State citizen referrals, oil discharge reports, reports from SPCC facilities that self identify per section 112.4, and other various available data sources to identify and target SPCC facilities for inspection. EPA has been extremely resourceful in identifying and targeting facilities for inspections and, given the large universe of covered facilities, there is ample opportunity to target limited resources on those facilities and locations that pose a greater threat to the environment.

OIG Response: We clarified certain statements to address EPA’s comments. Although we acknowledge EPA’s draft inspection targeting strategy in the report, few regions reported using this strategy in response to the information request.

Page 5, second paragraph. The statement “For example, Plans must include facility diagrams ...” should be edited to remove “facility diagrams.” At the time of the OIG review, facility diagrams were not yet required under the regulations for most SPCC Plans. Currently only a portion of covered facilities are required to include diagrams in their Plans (i.e., those required to comply with revised SPCC requirements in November 2010).

OIG Response: We disagree that reference to facility diagrams should be removed from this sentence. We revised our statement to specify that all Plans are required to have facility diagrams as of November 2011.

Page 5, third paragraph. EPA recommends that OIG remove “triennial” from in front of Government Initiated Unannounced Exercises (GIUE). A triennial exercise of the FRP is different than an individual GIUE. Facilities are only subject to an exercise once during a three year period (unless the drill was unsuccessful). There is no requirement for EPA to inspect the facilities every three years.

OIG Response: We believe the sentence is supported within the national guidelines and left the sentence unchanged.

Page 6, second paragraph under Noteworthy Achievements: EPA Region 4 maintains a database with location and classification information for FRP facilities (and SPCC facilities inspected over the past several years) which is used in planning and preparedness. For instance, during the recent Alabama tornado outbreak and Mississippi/Tennessee floods, this database and GIS were used to map facilities within tornado paths and within predicted flood zones. Data was used to provide a basis for call down lists and field assessments. This capability substantially streamlined our assessment process. Region 4 supports the consistent national database effort already underway.

OIG Response: We included Region 4 in the list of regions that have used GIS in planning and preparedness, but did not provide specific details of its activities.

In addition, most other regions have incorporated data on SPCC facilities and FRPs in the GIS layers used in the Area Planning efforts conducted by all ten EPA Regions.

Page 7, paragraph 4 under Scope and Methodology

As noted in the comments above for page 5, OIG, in the twenty Plan reviews, may not have properly considered the information required to be in an SPCC Plan in light of the current compliance date and associated extensions. Specifically, the draft report notes that some of the SPCC Plans did not have facility diagrams and information relative to new requirements under §112.7. However, at the time of the audit, facility diagrams were not required under the SPCC rule for most facilities. A key Plan review parameter is the facility’s initial date of operations; this information was not noted in most instances of the OIG support data for the study. Without the facility’s initial date of operation, it is impossible to determine the information required to be in the different facilities’ Plans. OEM conducted a brief review of the underlying data and analysis of these Plans and identified concerns with the plan review methodology. At a minimum, the review should have been based on the pre-2002 amendment requirements; at the time of the audit, the new 2002 provisions were not required for most Plans. Instead, the 2002 requirements appear to have been incorrectly used as a metric in the OIG evaluation.

OIG Response: We noted the importance of the facility’s initial date of operation. Although we found that 14 of the 20 Plans reviewed were missing this information, we added that these Plans would likely have needed to be amended prior to November 11, 2011, to be in compliance with the SPCC Rule amendments.

EPA is concerned that although OIG recognized the limitations of the review methodology in the sentence: “*Because we did not have a large enough sample of facilities to be statistically valid, we cannot generalize the results of this analysis of 20 Plans to the program as a whole,*” it cited numerous deficiencies of these Plans as an indicator of program ineffectiveness and poor management. The OIG may want to modify its conclusion and to consider recommending a broader study of Plan consistency.

OIG Response: We clarified certain statements in this section of the report to address EPA's comments and added a recommendation on this topic.

Page 7, paragraph 5. EPA recommends that the OIG delete the Region 5 checklist. There is only a national SPCC checklist.

OIG Response: We deleted the Region 5 checklist.

Page 8, under Prior Audit Coverage

With regard to the prior GAO audit, GAO's review of the universe was limited. The universe was modeled from state regulatory and registration databases, USDOC Census of Manufacturers, and USDA Census of Agriculture.

EPA respectfully disagrees with the conclusions documented in the sentence: “EPA cannot employ a risk-based approach to target inspections to those facilities that pose the greatest risks of oil spills into or upon navigable waters.” EPA’s draft targeting strategy, although not risk-based since sufficient data on the likelihood of an oil spill at any one facility is not known, is hazard based and appropriately directs our inspection resources to facilities that, if there is a discharge, may cause harm.

OIG Response: Because the conclusion is from GAO's 2008 evaluation of the SPCC program, we did not revise this section.

Chapter 2

Page 9, first paragraph.

OIG states: “EPA has not implemented a program that can effectively prevent oil spills to navigable waters or mitigate the effect of those spills.” OSWER believes that this assertion is not supported by the facts nor is it evidenced by the draft report’s requested corrective action.

OIG Response: We believe this assertion is supported by the fact that EPA has limited knowledge of the facilities it is responsible for regulating under this program.

Page 9, under **EPA Has Limited Knowledge of Facilities Regulated by the Oil Pollution Prevention Program**; first paragraph:

“The principal cause of EPA’s inability to effectively manage the CWA Section 311 program is that the Agency does not know the location and characteristics of the vast majority of CWA Section 311 facilities.”

EPA acknowledges that we do not have comprehensive existing information and no formal mechanism to collect data on the location and characteristics of the vast majority of CWA Section 311 facilities and that this information helps with compliance. However, OSWER respectfully disagrees with the conclusion that without this knowledge alone we are unable to effectively manage the program, especially in light of our ongoing multi-year efforts to measure the compliance rate of facilities and other initiatives in our 5-year strategic plan for the oil program. The information EPA has already gathered from State databases or other federal and local data sources allows us to target certain industry sectors for compliance as we build up our national Oil Program database capability to focus on systemic violation areas and high-risk facilities.

OIG Response: We acknowledge that the Agency has a program in place to manage known regulated facilities, and we revised this sentence and certain statements in the report. However, we continue to maintain that effective management of the SPCC program requires EPA to have knowledge of more than 4 percent of the regulated universe. Our report presents concerns with using data in state databases to identify regulated facilities.

Unanticipated release and discharge prevention programs are unique from traditional pollution programs in that an evaluation of program effectiveness is not well characterized solely by either a statistically valid measure of compliance or by precise measurements of the number of spills occurring or prevented. We welcome a continuing dialog with OIG on ways to improve the Oil program database, existing data, and a means to measure effective program management.

Page 10, first full paragraph. OIG states that EPA Regions admit they are still missing many FRP facilities or have not received updated Plans.

As noted in the draft report, EPA requires submittal of FRPs to the regional offices. EPA is currently taking steps to apply limited resources to bring these “high-risk” facilities into compliance.

Page 10, third paragraph. State databases have been helpful in identifying owners and operators and locations of regulated facilities and are used for targeting.

OIG Response: We acknowledge EPA’s comment, but reiterate that there are critical limitations in using state databases to identify regulated facilities.

Page 11, first sentence at top of page. The industry type of the facility is not relevant to applicability of the requirements; however, it may be relevant to targeting for inspections. It is not clear whether it is the OIG’s intent to capture information needed for inspections or to determine facility applicability.

OIG Response: We revised our sentence to reflect the relevancy of facility type, as opposed to industry type. Depending on the type of facility, a facility may have to meet and/or incorporate additional requirements into its prevention Plan.

Page 11, under **EPA Cannot Determine the Effectiveness of the Oil Pollution Prevention Program**

Given the magnitude of the regulated universe, it may be virtually impossible to know the identity and compliance status of all covered facilities. We recommend OIG provide more specific recommendations on this point.

OIG Response: We agree that it would be difficult to know the identity and compliance status of the more than 640,000 regulated facilities; we still believe that EPA should expand its knowledge beyond 4 percent of the regulated universe. We did not include specific recommendations on this point.

This paragraph also does not reflect all of the compliance assistance activities that EPA performs. EPA regional and HQ staff attend industry conferences and perform outreach on the SPCC & FRP requirements. For example, Region 6 (as with many other regions) performs outreach activities in a particular area and then follows up with inspections. This activity does provide EPA with compliance knowledge for each area where these seminars are conducted.

OIG Response: The report presents a number of examples of EPA's compliance assistance activities.

Page 11, under *EPA Cannot Determine the Success of Its Steps to Enhance Quality and Consistency of Plans*

Under the first part of this section, EPA appreciates OIG's recognition of our efforts to improve compliance and to enhance the quality and consistency of Plans and to note the inspection/enforcement actions in light of the magnitude of the regulated universe.

EPA also has implemented significant regional and HQ outreach efforts through conferences, conference calls, webinars and training. Our website is provided during all outreach activities which is another means of communication with our stakeholders. EPA regional and headquarters staff have performed hundreds of outreach sessions to the regulated community in preparation for the upcoming and recently passed compliance dates. And we are currently undertaking, in an effort to address farms, the largest outreach effort in the history of the program.

OIG Response: The report presents a number of examples of EPA's compliance assistance activities.

Page 12, at top. The statement: "The certification by a professional engineer provided an element of accountability that the Plan contained information required by 40 CFR 112." While true, it does not acknowledge the potential for greater compliance and value of having the owner/operator certify compliance himself, especially at small, less complicated facilities. OSWER tested this approach in proposed and final rulemakings (see appropriate FR notices for discussion).

OIG Response: We clarified statements in this section of the report to address EPA's comments.

The statement: "EPA has a better idea of the effectiveness of its efforts to enhance the quality and consistency of FRPs because facilities must submit their Plans to the Agency for review" may not be accurate. OSWER believes this can only be gauged by reviewing Plans before and

after particular agency inspection efforts. Gauging consistency and quality of Plans can be assessed during inspections, compliance assistance efforts, and enforcement. All FRPs submitted to EPA are reviewed by the Regions. Plans for significant and substantial harm facilities are approved by the Region.

OIG Response: We believe that our original statement is correct because EPA does review FRPs, as EPA indicates in its comment.

See also detailed comments in methodology section regarding the 20 Plans

The 20 Plans reviewed included both SPCC and FRPs. The requirements are not the same for both SPCC and FRPs and it is not clear whether these differences were understood. For example, all FRPs (and ICPs) must have facility diagrams. As noted in the Methodology section, SPCC requirements for facility diagrams do not apply until the compliance date has arrived (and for many facilities this date has not arrived).

OIG Response: We added information to clarify the different requirements and formats facilities can use to prepare SPCC Plans, including FRPs and ICPs, as long as the SPCC Plan requirements are cross-referenced in the alternate format.

Page 12, under *EPA Can Improve Its Efforts to Promote Consistent Inspection and Enforcement* and elsewhere:

EPA does not agree that there is any significant inconsistency in interpretation of enforceability of FRP requirements and the authority to pursue penalties.

OIG Response: A memorandum, which was issued subsequent to our draft report, addresses our concerns. We revised the presentation of this issue based on the additional information provided in the Agency's responses.

Page 13, first full paragraph. There may be minor inconsistencies in what the guidance document outlines versus what the rule requires since updating to reflect recent rulemaking is currently underway.

The statement: "Six of the 10 regions also told us that they supplement the guidance with regional-level SOPs" could be misleading. We resolve questions that arise on our monthly inspector tech and oil manager calls. The updates to the guidance will include documentation of these discussions and resolution of inconsistencies. Additionally, the basis of the existing/new guidance is/will reflect final rule preamble discussions, which regions and the regulated community currently have for review and use to help ensure consistent interpretation of the rule. Finally, many of the rule amendments were deregulatory in nature and involved exemptions from the rule. We agree the guidance needs to be updated, but generally there are few new requirements to address in the new version of the guidance.

This draft report finding about the regional use of guidance is also based on a survey tool which, may have been confusing to the regions and therefore may have led to significant variability in the responses. OEM provided comments to the questionnaire and warned about the potential confusion that the survey tool may create for the regions responding. For example, in this case,

while it is true that all regions use the national guidance for interpreting the rule, the regions also develop specific SOPs for implementation (guidance). The draft report implies the regions use different guidance for interpretation of the regulation whereas the “guidance” they were referring to was SOPs for regional program implementation. This statement is misleading and may undermine the twelve year effort to promote consistent interpretation of the regulation that culminated in the release of the 2005 guidance document.

OIG Response: We clarified statements in this section of the report to address EPA’s comments.

Page 14, last paragraph. The issues listed below are not enforcement issues, rather they are jurisdictional.

The estimate of 70,000 offshore facilities under EPA’s jurisdiction was speculative and not the number of facilities located in State Waters seaward of the coastline.

NOTE: If this number was passed on to BOEMRE in the April 2011 letter referenced in footnote 12, EPA recommends that OIG work with BOEMRE to correct this number, as there appears to have been some sort of mix up in the numbers provided in the draft report and potentially in the letter to BOEMRE.

The recommendation to improve coordination with other federal partners does not relate to EPA’s management of its oil program. While there may be a gap in federal oversight, BOEMRE is the appropriate agency to rectify this, if necessary. EPA does not have jurisdiction to inspect these facilities.

OIG Response: We removed this section and recommendation from the final report. We notified the DOI OIG of this issue in April 2011.

Page 15, at top. The title “EPA Cannot Establish National Trends in Compliance History for Known SPCC Facilities” implies that EPA does not currently have the capability to establish national trends in non-compliance. ICIS currently has the capability to track these trends.

OIG Response: Although we agree that ICIS is able to track national trends in noncompliance, we believe that this capability is extremely limited, and that EPA cannot effectively establish national trends. We revised the title of this section.

Page 15, top paragraph. Regarding the need for a database to allow for knowledge of trends and history of inspected facility noncompliance and enforcement, EPA believes the draft report findings do not give sufficient weight or value to the monthly national calls that this program has initiated. Trends in compliance are routinely discussed on these monthly program and enforcement oil program calls.

OIG Response: We recognize monthly national calls as one tool the Agency uses to discuss trends in noncompliance. However, we believe this tool has limited capability to identify potentially undiscovered trends for targeting inspections and prioritizing limited resources.

Page 15, under the heading of “EPA’s Regional and National Databases,” OEM and OC have been working together and will continue to do so to achieve electronic crosstalk capability between the OEM Oracle database and ICIS to capture compliance monitoring data.

Page 15, at the bottom. The statement: “The current Access database and the forthcoming version of the National Oil Database do not specify the reason a facility is in noncompliance” is incorrect, as there is a comment field in the database where this information can be added. ESA codes and ICDS codes are included in the July 2011 deployment.

OIG Response: We maintain that this statement is correct. An optional comment field does not allow the Agency to easily analyze this information. We believe specific codes to categorize noncompliance (and violations) would give the Agency an additional tool to make program resource and management decisions.

Page 16, at top. EPA obtains this information from other sources. For example, EPA has information from trade associations, comments on rulemakings, and from stakeholders that participate in outreach activities that informs these programmatic management decisions.

OIG Response: We do not claim that these are without value, but they are incomplete.

Page 16, under Other Databases: Many of these facilities are outside of EPA’s jurisdiction and are not inspected by EPA for SPCC and FRP compliance.

Also, the statement: “For example, if a facility regulated by DOT discharges oil, EPA becomes responsible for the cleanup if the oil reaches EPA response jurisdiction” is factually incorrect. See edits to this statement in the draft report.

OIG Response: We removed this section from the report.

Page 16, Conclusion

EPA agrees with the finding on the lack of program data and the source of certain implementation challenges the program faces, from targeting to regulatory action development. The draft report however, does not put into context all the current program activities performed to manage and implement the program with the level of resources available.

OIG Response: Based on the Agency’s comments, a number of the current program activities are highlighted in the final report. Although we recognize that these activities help the Agency manage and implement the program, the Agency only knows the effectiveness of these activities for less than 4 percent of the regulated universe.

The increases in the success rate of the Government Initiated Unannounced Exercises (GIUEs) over the last several years in regions such as Region 1 are an example of the success of the program as well as the currently implemented database and program measures.

Recommendations

These recommendations fail to address the criticism of the program given in the findings. OIG provides no information on how these relate.

OIG Response: We disagree; the recommendations are directly related to our findings.

Under Recommendation #1

Recommendations 1a and 1c should be combined as they appear to be duplicative (if kept, as the recommendation is outside the scope of the report).

The National Oil Program Strategic Plan, national training programs, national guidance/policy documents, and OMB approved national program measures (all of which are currently implemented in the oil program) are the foundation for a centralized program and its evaluation which the program views as a success relative to our resource allocation.

OIG Response: We recognize that many components of the program are centralized, and we clarified statements throughout the report to reflect this recognition.

Recommendation 1a should be removed.

This wasn't identified as a problem in the scope of the report so the recommendation should be removed. If not removed, OEM has provided a preliminary response (see report edits).

OIG Response: We believe the recommendation is warranted. Even though EPA is currently working on revising guidance, this recommendation goes beyond current efforts to update guidance to include procedures for keeping the guidance updated in the future.

The statement: "a centralized and comprehensive CWA Section 311 program that includes standard operating procedures for updating policies and guidance ..."

What is meant by "standard operating procedures" for updating policies and guidance?

OIG Response: We removed this phrase from the recommendation.

Recommendation 1b

Can OIG describe what it means by a "risk-based strategy toward inspections and enforcement actions?" As described above, we have ample information on the hazards posed by oil storage facilities sufficient for targeting until such time as information to be collected in our national database system is robust enough to adjust that targeting.

OIG Response: The Agency needs an inspection strategy that focuses its limited resources on those facilities that pose the greatest risk of having a spill that could harm human health or the environment. Because the Agency is only aware of approximately 4 percent of all regulated facilities, it should include approaches to identify unknown facilities to improve targeting.

Recommendation 1.b

It is not completely clear what was intended by the recommendation to direct enforcement resources toward those facilities where spills pose the greatest risks to human health and the environment. EPA believes that the FRP portion of the program was designed to identify those high risk facilities. Risk is already considered when making a decision to bring an enforcement action. While our enforcement program does address high risk spills, there are many factors that might contribute to a decision to bring an enforcement action, including the history of violations at the facility, the need for injunctive relief, whether there are other similar facilities with similar noncompliance, whether there have been spills at the facility, and whether enforcement is the most effective tool to achieve compliance and have the greatest deterrent effect. The risk presented by a facility is certainly an important consideration, but these other enforcement factors must also be considered when making enforcement decisions.

OIG Response: We removed the reference to enforcement in this recommendation.

Recommendation 1c

The statement: “Consistent interpretation of EPA’s authority to enforce regulations” is identical to recommendation 1 A.

OIG Response: Although the Agency resolved the specific issue we identified during the evaluation, we still believe that this is a valid recommendation for future enforcement situations. EPA must commit to continuing consistent interpretation of EPA’s authority to enforce regulations in the future.

Recommendation 2e

Change databases from the plural to the singular, database. As stated previously, EPA plans to have crosstalk capability between the OEM Oracle database and ICIS, not with any other databases.

OIG Response: We made the suggested edit.

Agency Response From OSWER and OECA: Attachment B

OIG NOTE: We responded to all of the comments embedded in attachment B below. Technical changes suggested by the Agency were incorporated into this final report as appropriate, but are not recreated in this appendix. Attachment A of the Agency's response is included in appendix C of this report.

Final report page no.	Agency comment	OIG analysis and response
Cover	<p>Suggest replacing the bird photograph with this one. It shows the variability (large scope) of the facilities we regulate (production versus storage) and is a facility we actually regulate under the EPA oil program. Caption: Pump jack at a non-transportation related oil production facility (EPA Photo).</p> <p>Suggest removing this photograph; the bird was oiled as a result of a discharge from a facility that EPA does not regulate and is related to response which is outside the scope of this report.</p>	We replaced this photo.
At A Glance	This [the phrase "located landward of the coastline" in the Background section] is not consistent with regulatory text.	We removed this phrase from the "At a Glance."
1	This error [use of lowercase plans in context of SPCC Plans] occurs throughout the report. SPCC "Plan" is a specific term and is capitalized to distinguish from any other plan.	We made this change.
1	All three of these examples [in the Background] are facilities not covered under EPA's Oil Pollution Prevention Program. The use of these examples may imply that EPA's Oil Pollution Prevention Program was inadequate to prevent these devastating spills when in reality, the program was not applicable. EPA and the Coast Guard share the lead for emergency response at such facilities, however, the emergency response program is not the subject of this report	We provided different examples.
2	The prevention and response planning authority is delegated to several agencies, including DOI, DOT, EPA, and the USCG.	We made changes to clarify this point.
2	The scope of the 311(j) authority is broader than navigable waters; the cleanest way to correct this is to delete this phrase.	We deleted the phrase "navigable waters" in relation to CWA 311(j) authority.

Final report page no.	Agency comment	OIG analysis and response
3	EPA does not regulate hazardous materials under the SPCC and FRP regulations. The CWA term is hazardous substances.	We deleted the phrase “hazardous substances.”
3	[The phrase “located landward of the coastline” is] Inconsistent with the regulatory text. See 40 CFR part 112.	We removed this phrase.
3	Cite basis and regulatory location [for “EPA has the authority to reclassify a facility as a “substantial harm” or “significant and substantial harm” facility.”].	We revised this sentence to better reflect the requirements under 40 CFR 112.20(b)(1) and 112.20(c) that allows the Regional Administrator to require a facility to prepare and submit an FRP to the Agency.
4	Cite regulation and who approves [the FRPs from significant and substantial harm facilities].	Support can be found in 40 CFR 112 Appendix F(B) for the portion of the sentence that discusses approval of FRPs. We also state here that FRPs are subject to approval by the Regional Administrator.
5	Inspectors always do this, [confirm that the facility meets the applicability criteria for the SPCC Rule] there is no evidence to the contrary.	EPA did not provide evidence for this. Therefore, we did not make any changes to the statement.
5	How about FRP Regulations? [in response to approximately 55 percent of inspected facilities were identified as not in compliance with SPCC regulations at the time of inspection]	We did not discuss FRP regulations because the information provided by EPA was incomplete.
7	IG needs to explain what these [Integrated Contingency Plans] are relative to FRPs and SPCC Plans.	Footnote 11, which explains Integrated Contingency Plans, is already included in the report.
9	FRP facilities do not have to submit their SPCC plans. [in response to original sentence “Only SPCC facilities also covered under the FRP requirements must report their presence, and submit their plans to EPA.”]	We revised the sentence.
9	See sentence in the paragraph below on FRP facilities; suggest moving it here. [“Region 6 recently discovered 45 previously unknown SPCC regulated oil and gas production facilities in New Mexico while conducting targeting activities.” Suggestion to move from 3 rd paragraph of EPA Has Limited Knowledge section to last sentence of 2 nd paragraph in same section]	We moved this sentence as suggested.
10	Consider adding: “However, EPA has made strides in working with the states, the U.S. Department of Commerce and the U.S. Department of Agriculture in identifying information on facilities during the regulatory action development process.” [to end of first full paragraph, starting “As of May 2011, OEM staff...”]	We added a sentence about this effort.

Final report page no.	Agency comment	OIG analysis and response
10	While we agree that the burden of proving that a water body is jurisdictional and that there is a reasonable likelihood that a discharge from the facility might enter a jurisdictional water body is sometimes resource intensive, we are concerned that the OIG conclusion, as drafted, might read to mean that all such analyses are always burdensome, which they are not. [in response to facilities reporting that the CWA Section 311 regulations do not apply because it believes there is no proof that the stream or waterway near the facility is a navigable water of the United States].	We revised the sentence.
11	There is no mention here of the OEM Strategic Plan and the OMB approved oil measures. This is a major oversight with regard to measures taken by EPA to manage the program. [EPA Cannot Determine the Effectiveness section]	We included information on the OEM Strategic Plan and OMB-approved oil measures to the “Noteworthy Achievements” section.
11	Compliance assistance involves actions taken independently from enforcement. We do not provide compliance assistance as part of an enforcement action. [in response to EPA providing compliance assistance at a facility owner/operator’s request or as part of an enforcement action].	We revised this statement.
11	EPA has implemented significant regional and HQ outreach efforts through conferences, conference calls, webinars and training. Our website is provided during all outreach activities which is another means of communication with our stakeholders. EPA regional and headquarters staff have performed hundreds of outreach sessions to the regulated community in preparation for the upcoming and recently passed compliance dates. And we are currently undertaking, in an effort to address farms, the largest outreach effort in the history of the program. [in response to EPA utilizing it website as the principal means of communication with regulated facilities, an indirect and passive approach under the EPA Cannot Determine the Success of its Steps subsection]	We included the additional outreach efforts noted by the Agency in its comment in the suggested paragraph of the report. However, we believe that these outreach efforts are targeted to the limited known universe rather than expanding the size of the known universe.
11	Given the magnitude of the regulated universe, EPA acknowledges that it may never know the identity and compliance status of all covered facilities. Even so, EPA continues to seek ways to use limited resources to effectively target sectors with high non-compliance rates and to bring these facilities into compliance, seek progressively higher rates of compliance each year through our program measures, and to build our informational databases to work toward understanding prevention program effectiveness. [in response to the second paragraph under the EPA Cannot Determine the Success of its Steps subsection]	We mentioned steps EPA takes to track the number of facilities that return to compliance as part of the program measures.

Final report page no.	Agency comment	OIG analysis and response
12	EPA respectfully disagrees it is unable to assess the quality or consistency of prevention and response plans. See Attachment A. [in response to statement that EPA is unable to assess the quality or consistency of prevention and response plans in the EPA Cannot Determine the Success of its Steps subsection]	We clarified the statement in the report to reflect that the Agency is currently only able to assess the quality and consistency at known facilities.
12	EPA does not control the rulings of federal judges, ALJ's, the EAB or hearings officers. We have, however, taken steps to improve consistency in the types of enforcement actions that EPA might pursue to address similar types of noncompliance. [in response to the phrase "regional enforcement rulings and decisions" in the first paragraph of the EPA Can Improve its Efforts to Promote Consistent Enforcement subsection]	We removed the word "rulings."
12	The penalty policy provides a standardized approach to settlement penalties. See description in Recommendations section below for additional information on OECA's efforts to promote consistent enforcement. [in response to "OECA published a civil penalty policy for CWA Section 311(b) and 311(j) programs" located in first paragraph of EPA Can Improve its Efforts to Promote Consistent Enforcement subsection]	We added additional information to the sentence.
--	EPA respectfully disagrees that there is a lack of agreement over FRP enforcement.	This inconsistency was resolved after we issued our draft report. We revised the presentation of this issue based on the additional information provided in the Agency's responses.
13	These efforts [inspection targeting, enforcement, and implementation strategies] were under consideration before the recent oil spills.	We revised the statement based upon the Agency's comment.
13	Added scope to address the scope of the effort [inspection targeting, enforcement, and implementation strategies].	We added scope to the statement.
13	OECA and OSWER have been, and will continue to, discuss and coordinate on these efforts [inspection targeting, enforcement, and implementation strategies].	We made no changes.
13	We recommend OIG consider modifying or deleting the two parentheticals in this paragraph that specifically identify regions. We do not believe that the decision of these regions not to use the ESA demonstrates any inconsistency in enforcement. The ESA process is a voluntary tool that some regions use to quickly address small, easily correctable violations. Other regions may use different tools to achieve the same purpose.	We added a footnote to clarify the ESA process based upon the Agency's comment.

Final report page no.	Agency comment	OIG analysis and response
13	This report does not otherwise address the spills enforcement program; consider whether this statement should be deleted.	We did not make any revision since the following sentence refers to CWA 311(j).
--	EPA respectfully disagrees and requests that the OIG consider deleting it from the report.	This inconsistency was resolved after we issued our draft report. We revised the presentation of this issue based on the additional information provided in the Agency's responses.
13	EPA respectfully disagrees with this statement and requests that the OIG consider deleting it from the report.	This inconsistency was resolved after we issued our draft report. We revised the presentation of this issue based on the additional information provided in the Agency's responses.
13	EPA respectfully disagrees with this statement and requests that the OIG consider deleting it from the report.	This inconsistency was resolved after we issued our draft report. We revised the presentation of this issue based on the additional information provided in the Agency's responses.
--	EPA does coordinate with other federal partners on enforcement when there is overlapping enforcement authority or potentially related claims. EPA has a memorandum of agreement with the U.S. Coast Guard for enforcement coordination.	We removed this paragraph from the report. This issue was referred to DOI OIG.
--	EPA does not have authority to inspect [for SPCC and FRP compliance] these facilities [offshore facilities not subject to SPCC or FRP regulations]	We removed this paragraph from the report.
--	EPA does not believe that this report is the place to comment on the performance of DOI as that is not the subject of this report, nor is it within the expertise or role of EPA to be commenting on the DOI program.	We removed this paragraph from the report.
--	The implication is that EPA should take some enforcement actions, but it cannot for facilities not under EPA jurisdiction (such as the ones which remain under DOI jurisdiction). We recommend that the implication/nuance be addressed. [in response to statement that DOI retains jurisdiction for offshore facilities"].	We removed this paragraph from the report.
--	The Submerged Lands Act and case law define the terms used in the MOU. Under the Submerged Lands Act and case law these facilities are not landward of the coastline. Under the Act and the MOU, 39these facilities in state waters, seaward of the coastline, are the responsibility of BOEMRE. EPA does not have the resources or jurisdiction to inspect these facilities in state waters seaward of the coastline.	We removed this paragraph from the report.

Final report page no.	Agency comment	OIG analysis and response
13	EPA respectfully disagrees with this conclusion [heading EPA Cannot Establish National Trends in Compliance History for Known SPCC Facilities]. See comments in Attachment A.	Although we agree that EPA is able to track national trends in noncompliance, we believe that this capability is extremely limited—to known facilities—and that EPA cannot effectively establish national trends. We revised the title of this section.
14	Please note that ICIS has the capability to track CWA Section 311 violations for both SPCC and FRP subject facilities. [in response to last sentence of 1 st paragraph of EPA Cannot Establish National Trends section]	We made no changes in response to this Agency comment. ICIS currently is not capable of capturing trends or providing a full and detailed history of deficiencies and noncompliance.
14	Once the new data system is in place better knowledge regarding specific deficiencies will be available. [in response to first sentence under EPA's Regional and National Databases subsection]	We made no changes because the new data system is not in place yet.
14	The Oracle database is currently live. [in response to statement that the Oracle platform was projected to go live in mid-July 2011].	We updated this sentence to reflect when the Oracle database actually went live.
14	Note that ICIS will be ready for cross-talk capability with the Oil Program database by the first quarter of FY12. It may take longer for the Oil Program database to be ready for this function. [in response to statement about duplicative data entry]	We revised this sentence to reflect the projected date of FY 2012.
14	The terms “deficiency” and “noncompliance” are terms of art. The edits regarding these terms are intended to ensure that they are said accurately. “Noncompliance” suggests that the region has concluded that a violation has occurred. The database also tracks sections taken to address “deficiencies” and return the facility to compliance before a complete analysis of violations takes place. Deficiencies are potential violations – they do not necessarily demonstrate noncompliance. [in response to OEM has not established codes that indicate whether a facility was out of compliance.]	We agree with the Agency's comment regarding the difference between “deficiency” and “noncompliance.” As a result, we revised the sentence to reflect the correct terminology.
14	A deficiency is a potential violation – it does not necessarily demonstrate noncompliance.	We made no changes.
14-15	Although mistakes can be made, OC annually issues a Reporting Plan to the regions establishing the reporting and data certification schedules for ICIS. This Plan also includes an attachment focused on recommendations for improving data quality. At midyear and end of year reporting cycles the DRA certifies that enforcement and compliance data has been reviewed and is correct. [in response to incomplete/inconsistent enforcement data entry statement]	We revised the sentence to acknowledge the reporting plan. However, we believe the analysis still stands.

Final report page no.	Agency comment	OIG analysis and response
14-15	<p>ICIS is designed to allow tracking of national trends in compliance enforcement history for most of the media programs, including SPCC and FRP. Although mistakes can be made, OC annually issues a Reporting Plan to the regions establishing the reporting and data certification schedules for ICIS. This Plan also includes an attachment focused on recommendations for improving data quality. At midyear and end of year reporting cycles the DRA certifies that enforcement and compliance data has been reviewed and is correct. [in response to incomplete/inconsistent enforcement data entry statement]</p>	<p>We revised the sentence to acknowledge the reporting plan. However, we believe the analysis still stands.</p>
--	<p>To the extent EPA would need this information, we are able to obtain it from the federal regulatory agency. [in response to statement about incomplete facility histories]</p>	<p>We removed this section.</p>
--	<p>It may be possible to have periodic meetings with these other agencies as necessary to discuss such issues</p>	<p>We removed this section.</p>
--	<p>DOT provides a lot of information on its website regarding its administrative orders and other enforcement activities. EPA has easy access to this publicly available information.</p>	<p>We removed this section.</p>
--	<p>Different tank thresholds and other regulatory differences would make sharing data with states on a regular basis unnecessary and not very useful. For some compliance determination initiatives it may make sense to seek using certain state data for facility targeting. This could be done with specific information collection requests as needed.</p>	<p>We removed this section.</p>
15	<p>EPA suggests the OIG consider the following conclusion: "EPA lacks the data to ensure comprehensive oversight of the CWA Section 311 program designed to prevent, plan and prepare for oil spills. The Agency has provided guidance to owners and operators of SPCC facilities, but can only evaluate the quality of the SPCC Plans based on the small number inspected per year. Because the SPCC regulations do not require facilities to notify EPA that they are regulated, EPA cannot identify every facility in the SPCC regulated universe and can only produce a limited compliance history in its program database. While EPA is moving in the right direction with its upcoming national oil program database, the database will not exchange data with other EPA databases.</p>	<p>We reviewed the Agency's suggested revision. We made slight changes based upon the Agency's suggestion.</p>
15	<p>This [fields/codes to categorize noncompliance] has been addressed in the database.</p>	<p>We still believe that specific fields/codes are needed in the national oil program database. An optional comment field is not an adequate tool for analyzing trends in noncompliance.</p>

Final report page no.	Agency comment	OIG analysis and response
--	EPA respectfully disagrees with this statement and requests that the OIG consider deleting it from the report.	This inconsistency was resolved after we issued our draft report. We revised the presentation of this issue based on the additional information provided in the Agency's responses.
15	There is already centralized oversight of CWA 311 enforcement. Judicial enforcement actions involving CWA Section 311 regulatory violations are already designated as nationally significant and require headquarters involvement and review. OECA is involved in CWA 311 administrative enforcement in a similar manner as other CWA administrative cases – when a case presents issues of national significance, then the region will coordinate with OECA.	We agree with the Agency's comments. As a result, we removed the reference to centralized oversight.
15	OEM believes it has already taken steps to address this recommendation. We suggest the findings in the report be recast to call for program improvement and suggest OIG provide recommendations to improve the quality and consistency of Plans. We suggest a recommendation that OEM will audit a certain number of Plans inspected and reviewed by the regions and access the consistency of Plans at a national level recognizing that this sample will be limited). We believe this recommendation should be implemented after the compliance date arrives so this evaluation will be relevant to the suite of rule changes made from 2002 forward and their effect on plan consistency and quality.	We reviewed the Agency's comment and revised the recommendations to incorporate the Agency's suggestion.
15	OSWER and OECA are working together to develop an enforcement and implementation strategy for the oil program (SPCC and FRP). This effort includes discussions for inspection, targeting and enforcement response.	We made no changes.
15	We recommend deletion of "and enforcement actions" in b. We also recommend changes in i to reflect the OIG's focus on the prevention program. See Attachment A explanation under the section "Recommendations1.b."	We deleted the phrase in question from the sentence. We incorporated the Agency's suggested recommendation wording, which focuses on the prevention program.
16	OEM agrees that consistent interpretation is a good recommendation but we have already taken actions to increase consistency	Although this specific issue was resolved during the course of the evaluation, we believe it is important that EPA ensure that consistency is maintained in the future; therefore, we retained this recommendation.

Final report page no.	Agency comment	OIG analysis and response
16	We recommend deletion of “and EPA’s authority to enforce regulations.” We believe there is consistent interpretation of EPA’s authority to enforce the FRP regulations. As explained previously above (and in Appendix A), OECA recommends deleting this recommendation because there is consistent interpretation of EPA’s authority to enforce the FRP regulations. OECA has promoted consistent enforcement by developing a national penalty policy and expedited settlement option, is working with OSWER to develop an enforcement and implementation strategy, and participates in enforcement actions that involve issues of national significance. Through national meetings, monthly conference calls, informal dialogue, and headquarters coordination meetings, OECA regularly engages in discussions with regional enforcement staff, OSWER, and the Office of General Counsel to coordinate on consistency of enforcement approaches and regulatory interpretation.	Although the issue identified by the OIG was resolved during the course of the evaluation, we believe it is important that EPA ensure that consistency is maintained in the future. We revised the presentation of this issue on page 13 of this report.
16	We believe that ICIS can currently track these trends	We believe that the deficiency and noncompliance trends ICIS is capable of reporting do not contain enough detail to help the Agency assess the effectiveness of its program activities.
16	OEM believes that the National Oil database will track these trends	We believe that the National Oil Database is not capable of reporting this information in enough detail to help the Agency assess the effectiveness of its program activities.
--	We recommend that reference to enforcement should be deleted from these recommendations because we do not believe the OIG intended to include recommendations for spills and other enforcement strategies. See Attachment A for explanation in section “Recommendation 1.b.”	We removed the reference to enforcement in this recommendation.

Agency Response From Region 5

July 29, 2011

PRE-DECISIONAL

MEMORANDUM

SUBJECT: Region 5 Response to the Office of Inspector General's Draft Report:
"EPA Needs to Improve Management of Its Oil Pollution Prevention Program"
Project No. 2010-1360

FROM: Susan Hedman
Regional Administrator

TO: Wade Najjum
Assistant Inspector General for Program Evaluation

Region 5 appreciates the opportunity to comment on the above-referenced draft report. In our view, the draft fails to recognize the strengths of Region 5's oil pollution prevention, enforcement and compliance assistance program. Consequently, I am writing to highlight some of Region 5's work in this area.

Region 5 has reviewed over 600 Facility Response Plans (FRPs), including 312 from significant and substantial harm facilities that have been approved. We are in the process of reviewing for approval the remaining 84 FRPs for significant and substantial harm facilities in Region 5.

Following the 2010 BP Deepwater Horizon spill, I directed my staff to reexamine the FRPs for all 23 BP facilities within one-half mile of the Great Lakes to ensure that these facilities are ready to respond to oil spills. My staff met with BP to discuss the deficiencies that we identified in the course of this review (*e.g.*, failure to identify vulnerable areas; spill response notification forms that lacked information; incomplete or illegible diagrams; outdated certification pages; missing equipment; and unsigned substantial harm forms.) Region 5 is reviewing BP's corrected FRPs, and thus far we have found only minor deficiencies.

During the summer of 2010, we also reexamined the FRPs for all 25 significant and substantial harm facilities within one-half mile of the Great Lakes. Although we found only minor deficiencies, these facilities were required to amend the plans and resubmit them for our approval. As of this date, all but 4 have been approved. My staff expects these to be approved by the end of the calendar year.

Region 5 has also issued many orders for oil spill cleanups, such as the ongoing response to the Enbridge pipeline spill in Marshall, Michigan. In that case, within a day of being notified of the pipeline rupture, Region 5 issued an order requiring Enbridge to immediately abate the imminent

and substantial endangerment caused by one of the largest oil spills in Region 5 history. As a result of this order and under Region 5's oversight, Enbridge has recovered almost a million gallons of oil, 15 million gallons of mixed oil and water, and 113,000 cubic yards of oil-contaminated waste from the waterways impacted by the spill. This type of prompt issuance of clean up orders is now the norm in Region 5.

Finally, please note that Region 5 objects to language in the draft report which indicates that Region 5 believes that there are no enforcement options available when a facility does not implement its FRP. (OIG draft report, pg. 12.) This is incorrect. Indeed, our Office of Regional Counsel recently circulated a memorandum describing our enforcement approach. (A copy of that memorandum is attached.) We are also working with Headquarters on the national enforcement strategy.

OIG Response: We significantly revised the presentation of this issue based on the additional information provided in headquarters' and Region 5's separate responses. The attachment to Region 5's response is not included in this report.

If you have any questions, please contact me or have your staff contact Sharon Jaffess, Superfund Division at 312-353-0536 or jaffess.sharon@epa.gov.

Attachment

cc: Cynthia Giles, OECA
Mathy Stanislaus, OSWER
Eric Levy, R5 - RMD

Distribution

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