



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

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# EPA Region 9 Needs to Improve Oversight Over Guam's Consolidated Cooperative Agreements

Report No. 16-P-0166

May 9, 2016



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## Abbreviations

CCA	Consolidated Cooperative Agreement
CFR	Code of Federal Regulations
CWA	Clean Water Act
EPA	U.S. Environmental Protection Agency
FFR	Federal Financial Report
FY	Fiscal Year
GEPA	Guam Environmental Protection Agency
GWA	Guam Waterworks Authority
IA	Interagency Agreement
OIG	Office of Inspector General
SDWA	Safe Drinking Water Act
SDWIS	Safe Drinking Water Information System
SDWIS/FED	Safe Drinking Water Information System/Federal
SDWIS/STATE	Safe Drinking Water Information System/State

**Cover photo:** Ferry dock in the town of Merizo, Guam. (National Oceanic and Atmospheric Administration photo)

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# At a Glance

## Why We Did This Review

The U.S. Environmental Protection Agency (EPA) has significantly increased its funding of environmental programs in Guam from approximately \$1.3 million in 2006 to \$8.3 million in 2013. We conducted this audit to determine whether the EPA:

- Has controls and processes in place to ensure proper oversight of Guam's assistance agreements.
- Is ensuring that the assistance agreements effectively and efficiently protect human health and the environment.

During the course of our audit, we decided to focus on consolidated cooperative agreements (CCAs), as they involved the most funding.

**This report addresses the following EPA goals or cross-agency strategies:**

- *Protecting America's waters.*
- *Launching a new era of state, tribal and local partnerships.*

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## EPA Region 9 Needs to Improve Oversight Over Guam's Consolidated Cooperative Agreements

### What We Found

The internal controls of the Guam Environmental Protection Agency (GEPA) and the Guam Waterworks Authority (GWA) over assistance agreements need improvement, as well as Region 9's oversight of Guam's CCAs. We identified the following areas requiring attention:

- GEPA does not have complete control over program income funds.
- GEPA and GWA CCAs have inconsistent terms and conditions on agreement payment.
- GWA contracts shift risk to GWA and are missing federal and industrywide terms.
- GEPA and GWA inconsistently reported in-kind and interagency agreement costs.
- Region 9 project files were not readily available to third parties.
- Region 9 did not ensure reliability of GEPA Safe Drinking Water Information System data.

**More than \$67 million in CCA funds may not be administered efficiently and effectively. As a result, the EPA needs to enhance its internal controls accordingly.**

Recipients are required to comply with CCA terms and conditions, as well as the Code of Federal Regulations (CFR) in 2 CFR Part 225 and 40 CFR Part 31. Without adequate internal controls and oversight, more than \$67 million in CCA funds may not be administered efficiently and effectively, thus reducing the impact those funds could have on protecting human health and the environment. As a result, Guam agencies need to improve the management of EPA-funded projects, and the EPA needs to expand its internal controls accordingly.

### Recommendations and Planned Agency Corrective Actions

We made 18 recommendations to Region 9 regarding oversight and the need for other improvements, including:

- Recovering \$316,858 in unallowable costs and up to \$2,015,719 in misappropriated program income.
- Accessing and utilizing program income funds.
- Using appropriate grant payment methods and level of project officer review.
- Including needed federal terms and conditions in GWA contracts.
- Improving in-kind and interagency agreement expenditure reporting.
- Improving maintenance of Region 9 project officer files.
- Improving the accuracy of GEPA information system data.

Region 9 concurred with all of the recommendations and plans to complete a majority of the corrective actions by September 30, 2016.



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

THE INSPECTOR GENERAL

May 9, 2016

**MEMORANDUM**

**SUBJECT:** EPA Region 9 Needs to Improve Oversight Over Guam's  
Consolidated Cooperative Agreements  
Report No. 16-P-0166

**FROM:** Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

**TO:** Alexis Strauss, Acting Regional Administrator  
Region 9

This is our report on the subject audit 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.

The following Region 9 offices share responsibilities regarding Guam: Pacific Islands Office; Infrastructure Section, within the Water Division; the Tribal and State Assistance Branch; the Grants Management Office; the Drinking Water Management Section; and the Enforcement Division.

**Action Required**

The agency provided acceptable corrective actions for addressing the recommendations with milestone dates. Therefore, a response to the final report is not required. The OIG may make periodic inquiries on your progress in implementing these corrective actions. Please update the EPA's Management Audit Tracking System as you complete planned corrective actions. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal, along with corresponding justification.

This report will be available at [www.epa.gov/oig](http://www.epa.gov/oig).

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# Chapter 1

## Introduction

### Purpose

The Office of Inspector General (OIG) conducted an audit of the U.S. Environmental Protection Agency's (EPA's) assistance agreements with the Pacific Territory of Guam. Our objectives were to determine whether:

- The EPA has controls and processes in place to ensure proper oversight of Guam's assistance agreements.
- The EPA is ensuring that the assistance agreements effectively and efficiently protect human health and the environment.

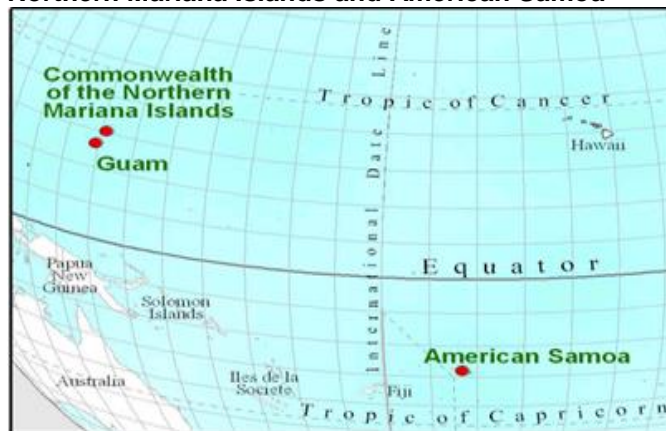
### Background

Major environmental laws allow the EPA to authorize state, tribal and local governments, and U.S. territories, to conduct permitting, inspection and enforcement activities. Authorized governments must have adequate personnel, funding and authority to carry out the program. The EPA may withdraw authorization if a government is not adequately carrying out the provisions of the law in administering or enforcing the program.

From fiscal years (FYs) 2009 through 2014, EPA Region 9 awarded the Pacific Territory of Guam \$67.6 million in consolidated cooperative agreement (CCA) amounts for accomplishing wide-ranging goals such as planning, developing and continuing the implementation of environmental management and protection statutes, regulations and programs.

The Omnibus Territories Act of 1977, as amended, authorized federal agencies to extend to the governments of Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and their agencies and instrumentalities the ability to consolidate grant funding.

**Figure 1: Map showing Guam, Commonwealth of the Northern Mariana Islands and American Samoa**



EPA image.



Guam is an unincorporated territory of the United States with an area of 212 square miles. Guam is, located 6,000 miles west of San Francisco and 3,700 miles west-southwest of Honolulu. Guam’s population is over 180,000. Approximately 13 percent of Guam’s population is affiliated with the military. Region 9 collectively refers to Guam, the Commonwealth of the Northern Mariana Islands and American Samoa as the “Pacific Territories.”

Region 9 awarded CCAs to address environmental challenges in Guam involving the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). Starting in 2010, funding levels for Guam have increased compared to prior years and currently average over \$10 million per year. Funding was increased to address long-standing infrastructure and environmental needs. From FYs 2009 to 2014, Region 9 awarded more than \$67 million in environmental protection and construction funds to Guam, as shown in Table 1.

**Table 1: Region 9 CCAs to Guam**

Recipient	Agreement	Project period	Award amount
GEPA	M00906309	10/1/2008 – 3/31/2014	\$14,959,165
GEPA	M00903614	10/1/2013 – 9/30/2018	6,292,120
GWA	M96902611	10/1/2010 – 9/30/2017	38,261,117
GWA	M96902615	10/1/2014 – 9/30/2018	8,138,073
<b>Total</b>			<b>\$67,650,475</b>

Source: CCAs to Guam.

Guam has two entities involved in implementing the activities in the CCAs.

- Guam Environmental Protection Agency (GEPA):** GEPA is the government entity responsible for implementing EPA’s environmental programs. GEPA, a regulatory agency, was created to provide a united, integrated and comprehensive territorywide program of environmental protection. It provides a framework to fulfill the task of maintaining a high-quality environment and prevent environmental degradation of the quality of land, water and air by any pollutants, including all physical, chemical and biological agents.
- Guam Waterworks Authority (GWA):** GWA provides water and wastewater services to the people of Guam. There are three GWA drinking water systems with sources from approximately 120 wells, raw water treated at the Guam Ugum Water Treatment Plant, and water purchased from the U.S. Navy. GWA provides wastewater collection and treatment at seven wastewater treatment plants.

## Noteworthy Achievements

**2003 Stipulated Order:** In May 2003, the U.S. government and GWA entered into a stipulated order for preliminary relief to address issues of significant noncompliance with the CWA and SDWA. In a court order dated November 18, 2010, the court directed the U.S. government and GWA to work together to draft



a proposal for GWA to complete outstanding projects from the order. On November 11, 2011, the court issued an order of preliminary relief that established agreed-upon deadlines for outstanding projects from the 2003 stipulated order.

***Significant Improvements in GWA's Drinking Water and Wastewater:*** Region 9 reported that in the early 2000s, Guam was issuing nearly constant boil-water notices. Resulting from the stipulated order in 2003 and the 2010 and 2011 court orders, drinking water conditions have steadily improved and Guam's drinking water now regularly meets EPA health-based standards. Significant improvements that have improved the reliability of drinking water quality and supply include: construction of three new water storage tanks; upgrade to a groundwater chlorination system; and installation of chlorine residual monitors at wells. There have also been improvements to wastewater over the past few years. Since the construction to upgrade both the Northern District and Agana wastewater treatment plants, total suspended solids are down nearly 60 percent at the Northern District wastewater treatment plant and 30 percent at the Agana wastewater treatment plant.



Control panel at Fujita Pump Station.  
(EPA OIG photo)

***GWA Standard Operating Procedures:*** The June 2003 stipulated order required GWA to develop standard operating procedures. Based on concerns regarding the lack of internal controls, in February 2011, Region 9 awarded a contract for development of standard operating procedures and other tasks. Thus far, the contractor has developed over 50 standard operating procedures in areas including:

- Construction services.
- Engineering.
- Engineering services procurement.
- Project management of construction.
- Project management of design.

However, the contractor had not developed accounting procedures to provide assurance that costs are reasonable, allocable and allowable. After the OIG identified accounting procedures as a concern at GWA, Region 9 contracted to have procedures developed.

## Responsible Offices

The following Region 9 offices share responsibilities regarding Guam:

- **Pacific Islands Office:** This office manages domestic programs and grants in the Pacific Territories. CCAs fund the implementation of Guam's environmental protection programs. Region 9 reported that in addition to managing grant assistance programs, the Pacific Islands Office also coordinates with other offices in the region and nationally on regulatory and enforcement matters in the Pacific Territories.
- **Infrastructure Section:** Within the Water Division, the Tribal and State Assistance Branch has managed and supervised the EPA's grants to the Pacific Territory public utilities since 2013. The section has expertise in managing drinking and clean water grants.

The Grants Management Office, the Drinking Water Management Section, and the Enforcement Division also have responsibilities regarding Guam.

## Scope and Methodology

We conducted this audit from April 16, 2014, to December 29, 2015, in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

During the course of our review, we decided to focus on CCAs, as they involved the most funding. To answer our objectives, we reviewed:

- Omnibus Territories Act of 1977.
- The Code of Federal Regulations (CFR) in 2 CFR Part 225 (formerly Office of Management and Budget Circular A-87), *Cost Principles for State, Local, and Indian Tribal Governments*.
- Title 40 CFR Part 31, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*.
- Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Control*.
- Region 9's Quality Management Plan.
- EPA's Assistance Agreement Almanac.
- EPA's Records Management Policy (CIO 2155.3).

We also reviewed the active and recently closed CCAs awarded to GWA and GEPA for 2006 through 2018, as well as project officer End of Year reports from

2011 through 2013. The 2014 End of Year report was not completed and available for review. We interviewed managers and staff in Region 9's Pacific Islands Office and its Water Division. We also interviewed federal personnel outside the EPA involved in the Pacific Territory.

We conducted a site visit to Guam. We interviewed staff and management from GEPA, GWA, the GWA Consolidated Commission on Utilities Board, and the territorial audit office. We obtained documentation concerning financial and operational matters from GWA and GEPA, including:

- Standard operating procedures.
- Detailed quarterly and annual budgets.
- Data on projects funded by the EPA.
- Quarterly progress reports.
- Reimbursement requests.
- Financial transactions.
- Cooperative agreement workplans.

We toured the following Guam project sites:

- Fujita Pump Station.
- Route 16 Pump Station.
- Santana Pump Station.

We reviewed Federal Managers' Financial Integrity Act Annual Assurance Letters from FYs 2012 through 2014 for Region 9 to determine whether those letters identified any weaknesses related to Guam. The letters did not identify any such weaknesses.



Control Bay at Route 16 Pump Station.  
(EPA OIG photo)

## **Chapter 2**

### **GEPA Does Not Have Complete Control Over Program Income Funds and Unallowable Costs Were Claimed**

The Guam Legislature retained over \$2 million of GEPA earned program income funds. Program income is defined as revenue earned by the grant recipient, in addition to the proceeds obtained from the CCA. Title 40 CFR §31.25, as well as the CCAs awarded to GEPA, require all program income generated by the recipient to be retained and available to the recipient to support program activities. Despite continued efforts by GEPA and the project officer, the Guam Legislature has not relinquished control over the program income funds in question. As a result, GEPA has not been allowed unfettered access to all its program income funds. In addition, GEPA claimed \$316,858 of unallowable costs against the program income funds. The Guam Legislature's actions impact the ability of GEPA to fully achieve protection of human health and the environment.

#### **Federal and State Requirements for Use of Program Income**

Federal cost principles under 40 CFR §31.25 (a) and (b) define program income as gross income received by the grant recipient that is directly generated by a grant-supported activity, or earned as a result of the award. Grant recipients are encouraged to earn program income to defray program costs. According to the EPA's Grant Course Reference Library, program income is earned with activities funded by the CCA.

Title 40 CFR §31.43 provides remedies when a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation, an assurance, a state plan or application, a notice of award, or elsewhere. The awarding agency may take one or more of the following actions:

- Temporarily withhold cash payments.
- Disallow all or part of the cost of the activity or action not in compliance.
- Wholly or partially suspend or terminate the current award.
- Withhold further awards.
- Take other remedies that may be legally available.

For the Guam CCAs, the EPA uses the "addition method." This allows the program income to be added to the funds committed to the CCA. Federal regulations under 40 CFR §31.25(g)(2) require program income to be used for the purposes and under the conditions of the CCA. For example, award M00906309 was "to continue the successful planning, development and implementation of environmental management and protection statutes, regulations, and programs,

including outreach and education for all environmental media (Air, Water, Land) in Guam,” as such program income should only be used for these activities.

Terms and conditions in the GEPA CCA’s (M00906309 and M00906314) state:

- Unless specifically excluded as “program income” under 40 CFR §31.25, all program income generated by the recipient must be retained by, or made available to, the recipient to support activities associated with the consolidated environmental program.
- The recipient must maintain records which account for program income and specify how program income has been used.
- The recipient must report to the project officer at least annually with an accounting of all program income earned and a description of how these funds have or will be used to support the recipient’s overall environmental programs.
- In the event that program income was received and not made available to or utilized by the recipient to support activities that would otherwise be eligible to receive federal financial assistance under the CCA, the project officer may reduce future grant payments by the amount of program income in question.

Basic guidelines for allowability of costs under federal awards stipulated by 2 CFR Part 225, Appendix A, Section C.1.a and b, include the requirement for the costs to be necessary and reasonable and be allocable to federal awards. Section C.3.a states that a cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

Federal regulations at 2 CFR Part 225, Appendix B, Section 10.b, under “Defense and prosecution of criminal and civil proceedings, and claims,” allows for legal expenses required in the administration of federal programs.

For example, as required by federal law, Guam Public Law 24-322, enacted in December 1998, provides amendments to the current air pollution control standards for Guam. The law states that the Air Pollution Control Special Fund “shall be used solely for the costs of administration and implementation of the Act.” The law includes the following authorized activities: assisting permit applicants with the application process; reviewing and acting upon permit applications; writing permits; implementing and enforcing permit conditions; preparing and enforcing permit conditions; preparing guidance and rules; preparing emissions inventories; monitoring air quality; and inspecting facilities to ensure compliance with the regulations.

## Guam Legislature Controls Most of GEPA's Program Income Funds

GEPA is a semi-autonomous government agency within the government of Guam. GEPA has program income funds established for Air, Water, Pesticides, Underground Storage Tank, Drinking Water and Solid Waste programs. Region 9 has not verified that over \$2 million in GEPA-generated program income funds have been retained and used for program purposes. This includes income generated from actions such as permit and operating license fees, as well as violations. GEPA does not have unfettered access to all program income funds. Due to overspending by GEPA in 2009, the Guam Legislature enacted a law to control the following four program income funds to ensure GEPA stayed within budget:



GEPA building. (EPA OIG photo)

- Air Pollution Control Fund.
- Water Protection Fund.
- Water Research and Development Fund.
- Underground Storage Tank Fund.

According to GEPA staff, the four programs generate income by implementing federally funded programs via the CCA. This is significant because the Guam Legislature collects the program income funds and does not allow GEPA direct access to them. To gain direct access, GEPA must request an amount based on estimated usage. The Guam Legislature provides an allotment, which may not be for the amount requested. Also, the government of Guam further restricts access by placing a 15 percent hold on the funds, which means that 15 percent of the funds are not available for use by GEPA. Additionally, any portion of the funds not used expires on an annual basis.

Despite staying within budget since 2009, the Guam Legislature has not relinquished control over all the program income funds in question to GEPA. Both the EPA project officer and GEPA staff informed the OIG that their efforts to negotiate with the Guam Legislature for unfettered access to the program income have not been successful. However, beginning in FY 2015, the Guam Legislature revised existing legislation to return control over one of the program income funds back to GEPA—the Underground Storage Tank Fund.

The Guam Legislature's control and restriction to access of GEPA's program income violates federal requirements under 40 CFR §31.25 and the CCAs. If the program income identified as received is not made available to GEPA, Region 9 should reduce future grant payments by the amount of program income in question.

## Unallowable Costs Claimed Against Program Income Funds

GEPA claimed \$316,858 in unallowable costs against the program income in the Air Pollution Control Fund, involving unallowable court settlement costs (\$309,000) and unallowable travel by Guam's Office of the Governor (\$7,858).

GEPA posted a \$150,000 transaction in October 2008 and two transactions totaling \$159,000 in October 2009, all in payment of court settlement costs and interest associated with a dispute with a former GEPA employee. The court settlement costs were not authorized costs of the Air Pollution Control Fund. Guam Public Law 24-322 states that the Air Pollution Control Special Fund "shall be used solely for the costs of administration and implementation of the Act." The law includes the following authorized activities: assisting permit applicants with the application process; reviewing and acting upon permit applications; writing permits; implementing and enforcing permit conditions; preparing and enforcing permit conditions; preparing guidance and rules; preparing emissions inventories; monitoring air quality; and inspecting facilities to ensure compliance with the regulations. This issue was addressed in a November 2010 report from a Region 9 contractor. In addition, the project officer addressed this issue in the 2013 End of Year report dated September 25, 2014, which stated that:

Guam EPA has not yet responded to the findings of the 2010 financial audit ordered by Region 9's Grants Management Office. The agency must respond to the finding within 30 days, and must make arrangements to resolve issues related to questioned and/or unallowable costs.

As of January 2016, GEPA had not corrected this problem.

In December 2013 and January 2014, two staff members of Guam's Office of the Governor expended \$7,858 in program income funds to travel to climate change meetings in Washington, D.C., without prior approval from the project officer. Both CCAs for GEPA include a programmatic condition that requires all off-island travel by GEPA personnel to have prior approval from the project officer. Region 9 considers this condition to apply to all off-island travel, whether it is funded by direct grant funds or program income. As this travel was not approved by the project officer, the \$7,858 in travel costs are unallowable.

Since the \$316,858 in unallowable costs claimed against the program income funds was not used to support eligible activities under the CCA, the region should recover the funds or reduce future CCA payments by the amount of program income in question. Region 9 should also review GEPA program income transactions to verify that expenditures against program income funds are allowable, allocable and reasonable per 40 CFR §31 and CCA programmatic conditions.



## EPA Needs to Enforce Requirements Covering Program Income

While we recognize that the project officer has been working to address program income issues with GEPA since 2011, Region 9 needs to enforce the CCA requirements. Since 2011, the project officer has consistently reported a repeat finding related to GEPA program income in the End of Year report. In the 2013 End of Year report dated September 25, 2014, Finding #1 on program income stated that:

The recipient has not complied with the award condition on program income (programmatic condition P5). The assistance agreement states that “all program income generated by the recipient must be retained by, or made available to, the recipient to support activities associated with the consolidated environmental program.” Currently, a significant portion of the recipient's program income does not meet this requirement. The project officer sent a letter to the GEPA Administrator on February 14, 2012, detailing the recipient’s deficiencies and requesting immediate action to come into compliance with this grant condition. This finding was also noted in FY11 and FY12.

The recipient has committed to working with the Guam Bureau of Budget and Management Research (BBMR), the Department of Administration, and the Legislature to resolve this finding. A detailed response to the February 14, 2012, letter has not been received to date, but the recipient has provided verbal updates and has apparently resolved issues with some of the accounts in question. To fully resolve the issue, additional efforts are required to amend some laws governing some program income accounts. The recipient is encouraged to provide a full and complete response to the February 14, 2012, letter as soon as possible, and to work with the Legislature and/or Governor’s Office to resolve the remaining issues. If the recipient is unable to resolve the issues, EPA may commence grant enforcement action under 40 CFR §31.43.

Since 2011, the project officer has tried to obtain a response from GEPA regarding the unallowable court settlement costs claimed against program income funds. On April 2, 2015, in response to a November 2010 report finding, Region 9 sent an “Administrative and Financial Management On-Site Review CY2010 Enforcement Warning Letter” to GEPA requiring a response to the finding. In the letter, the region references 40 CFR §31.43 provisions for material compliance failure and states that the region may take one of the following actions:

(1) temporarily withhold cash payment pending correction of the deficiency by the grantee, (2) disallow all or part of cost of the

activity or action not in compliance, (3) wholly or partly suspend or terminate the current grant award for the grantee's programs, (4) withhold further awards, or (5) take other remedies that may be legally available.

Region 9 recommended that GEPA take steps to amend laws governing certain program income accounts. If GEPA is unable to resolve this issue, the EPA may commence grant enforcement action under 40 CFR §31.43. Region 9 acknowledged that GEPA had taken some steps to address the finding. However, Region 9 has not enforced the requirement that specifies that program income received be used for eligible activities.

Prior to enforcement action, Region 9 needs to verify the actual amount of program income generated from GEPA activities and controlled by the Guam Legislature. For program income identified as received and not made available to GEPA, Region 9 could enforce the terms of the CCA by reducing future payments by the amount of income in question. If no action is taken by the Guam Legislature, Region 9 should elevate this issue to the U.S. Congress for resolution.

Looking forward, Region 9 should work with GEPA to determine if it can regain authority to directly receive and process income payments. At this time, GEPA is not a fully independent department of the government of Guam and, as such, it does not have the authority to process its own financial transactions, including program income.

## **Over \$2 Million in Program Income Funds Could Impact GEPA Environmental Programs**

The Guam Legislature's control of GEPA program income has prevented GEPA from full access to over \$2 million in funds for implementing environmental programs, as required by 40 CFR Part 31 and the CCAs. Table 2 provides a breakdown. Significant environmental impacts may not have been achieved since funds were not being used to achieve the intended benefits.



Guam EPA boat in the Achang Reef Flat Marine Preserve, Guam. (National Oceanic and Atmospheric Administration photo)

**Table 2: Legislature-appropriated GEPA program income, FYs 2010–2014**

Program income fund	Fiscal year					Total appropriated
	2010	2011	2012	2013	2014	
Air Pollution Control Fund	\$328,394	\$280,795	\$164,901	\$84,422	\$185,344	\$1,143,856
Water Protection Fund	86,724	85,851	61,520	66,461	72,790	373,346
Water Research & Development Fund	90,653	91,729	64,726	73,321	73,688	394,117
Underground Storage Tank Fund	-	104,400	-	-	-	104,400
<b>Total</b>	<b>\$505,771</b>	<b>\$562,775</b>	<b>\$291,147</b>	<b>\$324,204</b>	<b>\$331,822</b>	<b>\$2,015,719</b>

Source: GEPA program income records and OIG calculations.

## Recent Agency Actions

On September 29, 2015, as result of a Limited Scope Administrative and Financial Management System Review of GEPA, the EPA stipulated that:

Unless GEPA can secure supplemental local funding to replenish the account within six months in the amount of \$309,000, the EPA will move to recover these costs under the provisions of programmatic condition P5 of assistance agreement M-00906309-0, which requires that program income funds be retained by the recipient to “support activities associated with the consolidated environmental program.”

Under condition S6 Budget Controls, the EPA included the requirement for GEPA to develop an action plan for budgetary control procedures which includes “identifying all projected resources available, including grants program income,” by February 1, 2016. The action plan is to be implemented by September 30, 2016.

## Recommendations

We recommend that the Regional Administrator, Region 9:

1. Work with the recipient, the Guam Legislature, and if necessary the U.S. Congress to enforce the utilization of all program income funds as specified by 40 CFR Part 31 and the CCAs. If control of the program income funds are not returned to GEPA, the EPA should: (1) temporarily withhold cash payments; (2) partly suspend or terminate the current award; or (3) withhold future awards.
2. Verify the program income received by the Guam Legislature for GEPA-generated activities from 2010 to when the Guam Legislature relinquishes control. Take appropriate action to recover program income funding still controlled by the Guam Legislature up to \$2,015,719.

3. For the period from FY 2010 to when the Guam Legislature relinquishes control, obtain and review detailed GEPA transactions for program income receipts and expenditures for all program income funds to verify expenditures are allowable costs per 40 CFR Part 31, and take appropriate action to recover unallowable costs.
4. Recover \$316,858 in unallowable costs charged to program income funds.
5. Work with GEPA and the government of Guam to determine if GEPA can be granted authority to directly receive and process income payments.

## **Agency Response and OIG Evaluation**

Region 9 concurred with Recommendations 1 through 5.

For Recommendations 1 and 2, Region 9 stated:

The project officer has aggressively pursued resolution on this topic since 2012. The project officer has helped GEPA identify the specific sections of Guam law that need to be changed to implement this recommendation, but GEPA has not taken necessary steps to resolve the issue. EPA Region 9 will pursue additional grant enforcement if the recipient fails to make progress and/or resolve the issue.

Region 9 provided a planned completion date of September 30, 2016 for Recommendations 1 and 2. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendations 1 and 2. These recommendations will remain open pending completion of the proposed corrective action.

For Recommendation 3, Region 9 stated that:

The project officer has requested this documentation from GEPA several times, commencing with a February 14, 2012, letter to GEPA. EPA Region 9 will continue to work with GEPA to obtain this information and take appropriate action to review income and expenditures and, if necessary, recover unallowable costs.

Region 9 provided a planned completion date of September 30, 2017. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendation 3. This recommendation will remain open pending completion of the proposed corrective action.

For Recommendation 4, Region 9 stated that:

EPA Region 9 issued a grant enforcement letter on September 29, 2015, disallowing \$309,000 in settlement costs from the Air Pollution Control program income fund. EPA Region 9 has given GEPA six months to either replenish the funds to the account from non-federal sources or EPA Region 9 will seek to recover the funds. EPA Region 9 will pursue a similar remedy for the additional travel costs questioned in the OIG report.

Region 9 provided a planned completion date of September 30, 2016. The OIG concurs with the agency's proposed actions, and when implemented, the corrective actions will satisfy the intent of Recommendation 4. This recommendation will remain open pending completion of the proposed corrective action.

For Recommendation 5, Region 9 stated that "The project officer has raised this issue with GEPA and will pursue additional information and meet with the various GovGuam stakeholders to determine if this recommendation can be implemented." Region 9 provided a planned completion date of September 30, 2016. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendation 5. This recommendation will remain open pending completion of the proposed corrective action.

Region 9's complete response to the draft is in Appendix A.

# Chapter 3

## GEPA and GWA CCAs Have Inconsistent Terms and Conditions on Agreement Payment

The CCAs to GEPA and GWA have inconsistent terms and conditions on agreement payment requirements for the recipient to follow. Region 9 may require the reimbursement method for agreement payments as a special award condition, according to 40 CFR §31.21(d). Region 9 included some reimbursement terms in the agreements by placing an extra measure of control over recipient funds by requiring the recipient to submit draw requests to the EPA project officer for review and approval prior to payment. However, this extra measure of control was never completely implemented. Consequently, there was confusion among GEPA, GWA and Region 9 staff about how agreement payments were to be made and whether the reimbursement method of payment was required.

### Federal Requirements for Grant Payment Methods

#### ***Advance Method***

The EPA's Assistance Agreement Almanac defines an advance as a payment to a recipient upon its request before outlays are made by the recipient. Title 40 CFR §31.21 (c) and (d) stipulate that grant recipients and subgrantees should be paid in advance, provided they maintain the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of funds and distribution by the grant recipient or subgrantee. Section 5 of EPA's General Terms and Conditions Applicable to EPA Assistance Agreement recipients as of January 13, 2014, stipulates that the recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked or financing method changed to a reimbursable basis. Section 5 applies to three of the four CCAs reviewed, and there was no similar condition prior to 2014.

#### ***Reimbursement Method***

The reimbursement payment method is often associated with the high risk designation, but this is not always the case. According to Section 4.5.2 of the EPA's Assistance Agreement Almanac, there are instances where it may be in the agency's interest to place a recipient under the reimbursement payment method. Under 40 CFR 31.21(d), the Award Official can require a recipient to be paid on a reimbursement basis if the recipient does not have adequate procedures in place to minimize the time elapsing between the transfer of funds from the EPA to the recipient and disbursement by the recipient to pay for costs. This would require placing a grant condition to that effect on the award. For some grant programs,

such as construction awards, it is common to place recipients under reimbursement method. Under the reimbursement method, the federal agency may require the grant recipient to submit supporting documentation for requests for reimbursement to the project officer for review and approval prior to payment.

### ***Special Award Conditions Permitted in EPA Agreements***

Federal regulations at 40 CFR §31.12 permit additional requirements (special award conditions) in awards if an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in Part 31, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible. One of the special award conditions may include payment on a reimbursement basis. Section 4.5.1 of the EPA's Assistance Agreement Almanac stipulates that special award conditions may include requiring the EPA's prior approval for costs and activities that would not otherwise require such approval or converting a recipient to a reimbursement payment method from an advance payment method or using reimbursement payment at the outset.

### ***High Risk Designation***

The EPA's Assistance Agreement Almanac Section 4.5.1 stipulates that recipients can be designated as high-risk when administrative, programmatic capability, or performance issues are not significant enough to warrant an enforcement action but the EPA's financial and programmatic interests must still be protected. A high-risk designation increases EPA oversight of a recipient for identified areas of financial or programmatic weakness or risk. If a recipient is designated high risk and the reimbursement payment method is imposed, formal implementation would be required with the Las Vegas Finance Center.

## **Inconsistent Terms and Conditions on Agreement Payment Requirements**

There were inconsistent administrative and programmatic payment requirements in the agreements awarded to GEPA and GWA. Per 40 CFR §31.3:

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

As shown in Table 3, the administrative conditions in all four agreements to GEPA and GWA provided for the advance payment method, which allows the



recipient to request payment of grant funds before outlays are made. However, programmatic conditions in all four awards provided for some form of the reimbursement payment method, which requires the recipient to submit a payment request along with supporting documentation for project officer approval prior to payment.

**Table 3: Payment methods for Guam agreements**

Recipient	Agreement	Award amount	Agreement administrative condition payment method	Agreement programmatic condition payment method	Actual payment method used by recipient
GEPA	M00906309	\$14,959,165	Advance	<i>Reimbursement terms</i>	<i>Advance &amp; Reimbursement Note 1</i>
GEPA	M00903614	6,292,120	Advance	Reimbursement terms	<i>Advance &amp; Reimbursement Note 1</i>
GWA	M96902611	38,261,117	Advance	<i>Reimbursement terms</i>	<i>Advance &amp; Reimbursement Note 2</i>
GWA	M96902615	8,138,073	Advance	<i>Reimbursement terms</i>	<i>Advance &amp; Reimbursement Note 2</i>
		<b>\$67,650,475</b>			

Note 1: For payroll, the recipient uses the reimbursement method. For non-payroll, the recipient uses the advanced method.

Note 2: For construction costs, the recipient uses the advance method.

Source: CCAs, interviews with GEPA and GWA staff and OIG analysis.

### **Awards to GEPA**

CCA M00906309 had a programmatic condition requiring prior review and approval of all reimbursement requests by the project officer (reimbursement method). CCA M00903614 had a specific programmatic condition requiring the reimbursement payment method. For example, the CCA stated, “Guam EPA agrees that the reimbursement method of payment shall apply under this assistance agreement.” For both agreements, GEPA’s actual draw practice uses the reimbursement method for payroll, where it pays for the costs and then requests reimbursement from the EPA. For non-payroll, they use the advance method, where it incurs the cost, request funds from Region 9, and, upon receipt, pay the bill.



Newly installed pipes and valves at Fujita Pump Station. (EPA OIG photo)

## **Awards to GWA**

CCA M96902611 and CCA M96902615 included a programmatic condition requiring the project officer to perform review and approval of payment requests for project costs (reimbursement method). For both agreements, GWA's actual draw practice is the advance method for construction costs, where it incurs the cost, requests funds from Region 9 and then pays the bill. For payroll, it uses the reimbursement method where it incurs the cost, makes payment, and then requests reimbursement from Region 9.

## **Confusion Regarding Payment Method Required**

There was confusion among GEPA, GWA and Region 9 about the CCA payment requirements. This arose due to conflicting language in the CCAs regarding the required payment method. All four awards contained administrative conditions providing for the advance payment method, yet they also contained programmatic conditions requiring project officer review and approval of payment requests.

GEPA staff stated that their payment requests for payroll use the reimbursement method, but they use the advance method for all other costs. However, the project officer for GEPA CCAs said he handles payment requests under the reimbursement method and performs a detailed review of all GEPA payment requests prior to approving payment.

GWA staff stated that their payment requests use the advance method. The prior GWA comptroller wondered why GWA used the advance method when the agreement was supposed to be under the reimbursement method. The project officer for GWA handles payment requests under the reimbursement method and does a detailed review before approving payment. According to the project officer, all Pacific Territory agreements use the reimbursement method.

## **Historical Problems in Guam**

A stipulated order was entered in 2003 against GWA and the government of Guam due to noncompliance with the CWA and SDWA. The stipulated order was superseded by a judicial order in 2011. Despite continued challenges at GWA, Region 9 has not designated GWA as "high risk." However, Region 9 stated it has "added a grant term and condition requiring GWA to submit invoices and all relevant support documentation for review and approval prior to drawdown of EPA funds and payment to the contractor."

## Recent Agency Actions

Region 9 completed a Limited Scope Administrative and Financial Management System Review. As a result, on September 29, 2015, the EPA notified GEPA that:

The review disclosed eight system weaknesses that needed improvement for compliance with EPA grant requirements.... GEPA was not able to demonstrate that it has implemented measures to ensure proper controls have been established to ensure compliance with federal requirements. As a result, EPA is adding specific conditions to the current assistance agreement pursuant to 2 CFR §200.207 “Specific conditions” (which replaced 40 CFR §31.12 “Special grant or sub-grant conditions for ‘high-risk grantees’”).

Under additional specific condition S12, the EPA placed GEPA under the reimbursement method of payment. The EPA stated that:

The reimbursement method of payment shall apply under this assistance agreement. The recipient shall maintain supporting documentation for any and all costs for which it seeks reimbursement from EPA under this assistance agreement.

The recipient shall submit each request for reimbursement to the Project Officer and obtain Project Officer approval prior to submitting the request electronically via the Automated Standard Application for Payments (ASAP) or manually to the Las Vegas Finance Center (LVFC). With each request, the recipient shall submit to the Project Officer a detailed listing or accounting of all transactions covered by the request. The recipient shall successfully implement this award condition for a period of not less than 36 continuous months.

## Recommendations

We recommend that the Regional Administrator, Region 9:

6. Review the CCAs to GWA, determine the appropriate method of payment, and update the CCAs accordingly.
7. Determine whether GWA should be designated “high risk,” and, if so, require formal implementation of the reimbursement payment method with the Las Vegas Finance Center.

## Agency Response and OIG Evaluation

Region 9 concurred with Recommendations 6 and 7.

For Recommendation 6, Region 9 stated that:

...to ensure adequate internal control and oversight, (Region 9) has determined the appropriate method of payment will continue to be the advance method with special award conditions. Region 9's water program will work with the Grants Management Office to ensure implementation of this recommendation with the award of the current year's CCAs.... As recommended by the OIG, the Region will draft a note to the CCA files summarizing the method and ensure the grantee's CFO [Chief Financial Officer] is properly instructed of the method and processing.

Region 9 provided a planned completion date of September 30, 2016. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendation 6. This recommendation will remain open pending completion of the proposed corrective action.

For Recommendation 7, Region 9 stated that:

At this time the comprehensive suite of programmatic grant conditions included in the GWA CCA provides adequate controls and oversight on the grantee. Also, operating the water infrastructure program on a reimbursement basis would unnecessarily reduce overall performance and effectiveness of federal grant funding. Therefore, the Region does not intend to designate GWA as "high risk" at this time, but will continue to scrutinize GWA's performance closely.

The OIG concurs that the agency's completed corrective actions satisfy the intent of Recommendation 7. This recommendation is closed with all agreed-to actions completed.

Region 9's complete response to the draft is in Appendix A.

# Chapter 4

## GWA Contracts Shift Risk to GWA

Region 9 procured contractors directly, paid for out of the CCA awards funds, which provided technical assistance to GWA. These contractors identified significant issues with the adequacy of GWA contracts, including shifting most of the contract risk to GWA and missing federal contract language in awarded contracts. Title 40 CFR Parts 31 and 35, and the CCAs to GWA, outline the federal requirements and contract terms to be included when using federal funds. GWA has not implemented any recommended changes because it believes it is subject to the Guam procurement code and does not have the ability to modify contracts. As a result, GWA has not positioned itself to avoid unnecessary risk and possible large value claims, which impacts over \$46 million in funding to GWA. In addition, GWA is not in compliance with federal contracting requirements.

### Federal Requirements for Contract Terms

Title 40 CFR §31.36(a) requires *states* to ensure every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations. According to 40 CFR §31.3, the term “state” includes any territory or possession of the United States. For this reason, Guam is considered by the EPA to be a “state” entity. Other requirements include:

- Title 40 CFR §31.36(c)(5) – “Buy American” requirements and Section 215 of the CWA.
- Title 40 CFR §31.36(h) Bonding requirements.
- Title 40 CFR §31.36(i) – Contract provisions: Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy, including compliance with the:
  - Copeland “Anti-Kickback” Act.
  - Davis-Bacon Act.
  - Contract Work Hours and Safety Standards Act.
  - Requirements and regulations pertaining to patent rights, copyrights and rights in data.
  - Sections of the Clean Air Act and CWA.

Title 40 CFR Part 35 includes the following requirements:

- Title 40 CFR §35.937-7 – Access to work site requirements.
- Title 40 CFR §35.936-22 – Insurance requirements.
- Title 40 CFR §35.938-4(b) – 30-day notice requirements.

In addition, CCA M96902611 has the following administrative and programmatic conditions:

- Administrative condition 4 requires compliance with the requirements of the EPA's Program of Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements as set forth in 40 CFR Part 33. In addition, good faith efforts are required for procuring construction, equipment, services and supplies under an EPA assistance agreement, and to ensure that sub-recipients, loan recipients and prime contractors also comply with 40 CFR §33.301. Records documenting compliance with the six good faith efforts shall be retained.
- Programmatic condition 11 requires the recipient to obtain performance bonds from the contractor.
- Programmatic condition 12 requires award of a contract to the lowest responsible bidder.
- Programmatic condition 29 requires compliance with federal cross-cutting requirements as well as other applicable federal laws. These requirements may include, but are not limited to, Occupational Safety and Health Administration Work and Safety Standards; the CWA; the Contract Work Hours and Safety Standards Act; and the Anti-Kickback Act.
- Programmatic condition 30 includes Davis-Bacon Act requirements.

## **Issues Reported on Adequacy of GWA Contracts**

Region 9 paid for contractors to provide technical assistance to GWA, including assessment of GWA-initiated contracts, using CCA award funds. The contractor identified significant issues with the adequacy of the contracts. This included a lack of required contract language that resulted in shifting most of the risk to GWA instead of the contractors. Also, the contracts did not include required federal contract language. The OIG obtained copies of these reports and completed an independent analysis.

### ***Missing Government Clauses Shift Most Risk to GWA***

In January 2010, one contractor (referred to here as contractor 1), assisting with oversight, identified that, due to the lack of required government clauses in awarded contracts, much, if not all of the contracting risk shifted to GWA rather than remaining with the contractors. This resulted in frequent and large value claims on several projects. To remedy this problem, contractor 1 strongly encouraged GWA to include industry-standard contract language in awarded contracts to ensure that risks are appropriately placed on the contractors rather than on GWA. This would ensure consistency and increase the efficiency of the contracting process as well as reduce the risk to GWA.

Specifically, the contractor recommended GWA adopt the Engineer's Joint Construction Documents Committee's Standard Terms & Conditions and other

supporting documents for construction projects. Region 9 contractors informed the OIG that the documents are standard forms used by most state governments. As of March 2016, GWA had not adopted any committee standard contract language or documents.

We obtained copies of GWA’s contract documents reviewed by contractor 1 and completed an independent analysis. The OIG interviewed the GWA attorney, two other EPA contractors and the project officers. Through these interviews and our independent analysis, we verified the findings that the contracting risks shifted to GWA rather than remaining with the contractors. This issue remains uncorrected.

**GWA Contracts Are Missing Federal Contract Terms**

Two other Region 9 contractors working with GWA on infrastructure construction projects (referred to here as contractor 2 and contractor 3) have recently encountered similar issues with GWA’s contract language. Both contractors stated that they had serious concerns about the adequacy of GWA’s contracts. Contractor 2 stated that once GWA commences work on currently slated projects, which are in the \$40-million-dollar range, the contract language will be integral to successful project completion.

Contractor 3 provided technical assistance by performing an analysis of the contracts and identifying missing terms. These missing terms were federal government requirements for EPA-funded contracts. Table 4 details the missing terms. The OIG’s review of GWA’s contract documents verified that there are missing federal requirements for contract terms.

**Table 4: Missing standard contract terms required for federal/EPA contracts**

Missing standard contract terms required for federal/EPA contracts	Identified by EPA contractor(s)	Verified by OIG	Requirement in CCA	Requirement in federal regulation
Davis-Bacon Act requirements, including Federal Wage Rates	√	√	M96902611, programmatic condition #30	40 CFR §31.36(i)(5))
Copeland Anti-Kickback requirements	√	√	M96902611, programmatic condition #29	40 CFR §31.36(i)(4))
Contract Work Hours and Safety Standards Act requirements	√	√	M96902611, programmatic condition #29	40 CFR §31.36(i)(6))
Minority and Women's Business Enterprises requirements	√	√	M96902611, administrative condition #4	40 CFR §33.201 to 212
CWA requirements	√	√	M96902611, programmatic condition #29	Section 215 of CWA and implementing EPA regulations and guidance; and 40 CFR §31.36(i)(12)

Source: OIG analysis of GWA contracts and EPA contractor information.



## **GWA Has Not Implemented Region 9 Contractor Recommendations**

GWA has not implemented recommendations to modify its contract documents to incorporate federal and industrywide terms. GWA legal staff believe they are using standard contract language. They also stated that GWA is subject to the Guam procurement code and, therefore, do not have the ability to revise GWA contracts.

Due to the significant issues identified, Region 9 has serious concerns about GWA's ability to manage over \$46 million in funding awarded to GWA. For current contracts, and particularly for future high-dollar contracts that are in the planning phase, GWA is not in compliance with federal contracting requirements and has not positioned itself to avoid unnecessary risk by adopting required federal language. This has resulted in shifting the risk to GWA instead of the contractor. This leaves GWA open to possible large-value claims, which impacts over \$46 million in CCA funding.

### **Recommendations**

We recommend that the Regional Administrator, Region 9:

8. Require GWA to include in its contracts all federal/EPA-required contract terms, per 40 CFR Parts 31 and 35 and the CCAs. Freeze or revoke funding until federal terms are included.
9. Work with GWA to develop and include industry-standard language in its contracts.
10. Work with GWA to adopt the Engineer's Joint Construction Documents Committee's Standard Terms & Conditions and other supporting documents for construction projects in its contracts.

### **Agency Response and OIG Evaluation**

Region 9 concurred with Recommendations 8, 9 and 10, and stated it:

...will continue to review all GWA contracts before approving them for execution and will ensure that all federal/EPA required contract terms, per 40 CFR Parts 31 and 35 and the CCAs are incorporated beginning immediately.

In addition, the region stated it:

...has initiated discussions with GWA and with the Guam Attorney General's Office to amend and enhance GWA contracts to include industry standard language, and specifications... and

will continue to encourage GWA to adopt the EJCDC's [Engineer's Joint Construction Documents Committee's] Standard Terms and Condition ... into its contracts.

At the exit conference on February 17, 2016, Region 9 provided a planned date of September 30, 2016, for completion of the correction actions for recommendations 8 through 10.

The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendations 8 through 10. These recommendations will remain open pending completion of the proposed corrective action.

Region 9's complete response to the draft is in Appendix A.

# Chapter 5

## GEPA and GWA Inconsistent in Reporting In-Kind and Interagency Agreement Costs

Our review identified inconsistencies in reporting on in-kind and interagency agreement (IA) costs by GWA and GEPA in the Federal Financial Reports (FFRs). Federal regulations and the CCAs require accurate reporting of outlays in the FFRs. However, Region 9 did not provide adequate instructions to recipients on reporting requirements for in-kind and IA costs. Specifically, Region 9 did not provide recipients with procedures on how to obtain EPA-expended in-kind and IA cost data from the Cincinnati Financial Center. Over \$12 million in-kind and IA costs may have been misreported by GWA and GEPA.

### Definition of In-Kind and IA Costs

The EPA's Assistance Agreement Almanac Glossary defines "in-kind assistance" as the services or products of an EPA contractor or another federal agency under an IA that the agency provides to a recipient as a form of financial assistance as provided for in the Federal Grant and Cooperative Agreement Act and EPA Order 5700.1. The estimated cost for the in-kind assistance is included in the EPA-approved budget for the agreement with the recipient.

The EPA's Assistance Agreement Almanac Glossary defines "interagency agreement" as a written agreement between federal agencies under which goods and services are provided in exchange for funds or in which federal agencies are authorized by statute to cooperate on a joint project that may involve providing funds for an assistance agreement.

### Federal Regulations and Region 9 CCAs Require Accurate Reporting

Title 40 CFR §31.41 (b)(1) to (b)(3) require grant recipients to submit FFR's for both construction and non-construction awards at least annually. It directs each grant recipient to report program outlays and program income. Title 40 CFR §31.3 defines outlays as including the value of in-kind contributions. In addition, each CCA includes an administrative condition for submission of interim financial reports which requires a certification stating:

by signing this report, I certify that it is true, complete, and accurate to the best of my knowledge. I am aware that any false, fictitious, or fraudulent information may subject me to criminal, civil, or administrative penalties.

## Inconsistencies in Reporting on In-Kind and IA Costs

We identified inconsistencies in reporting in-kind and IA costs by GWA and GEPA on the FFRs. GWA reported both the budgeted and actual amounts in the FFRs for CCA M96902611. GEPA reported only budgeted amounts in the FFRs for CCA M00906309. This is contrary to the requirement to report actual amounts.

One of the CCAs awarded to GWA, and two of the CCAs awarded to GEPA, included provisions for Region 9 to expend a portion of the agreement amount for in-kind and IA assistance totaling over \$12 million. These funds are expended by Region 9 out of the recipient's CCA funding for contract services, on-site technical assistance through inter-personnel agreements, and the EPA's IAs. The recipient has no control or authority over the use of these funds nor access to the amount of in-kind costs expended. One recipient stated that the recipient is required to make a blind certification, and also said that the Chief Financial Officer was hesitant to sign the FFR due to lack of information on the Region 9 actual expended in-kind costs.

## Region 9 Did Not Provide Adequate Direction to Grant Recipients on Reporting Requirements

The CCAs did not provide adequate direction to recipients on reporting requirements for in-kind and IA costs. Three of the four CCAs reviewed include in-kind and IA funding, as shown in Table 5.

**Table 5: Guam CCA in-kind costs**

Recipient	CCA	Total CCA amount	In-Kind		Interagency technical assistance	Total In-kind/ Interagency Agreement	Recipient's FFR reporting method
			EPA contractor	Inter-personnel agreement			
GWA	M96902611	\$38,261,117	\$10,783,863	\$360,000	\$50,000 (Note 1)	\$11,193,863	Reports both budget and actual in-kind amounts
GWA	M96902615	8,138,073	-	-	-	-	N/A
GEPA	M00906309	14,959,165	13,000	-	285,000 (Note 2)	298,000	Reports budgeted instead of actual in-kind amounts
GEPA	M00906314	6,292,120	\$428,405	-	\$100,000 (Note 2)	\$ 528,405	N/A (Note 3)
<b>Total</b>		<b>\$67,650,475</b>	<b>\$11,225,268</b>	<b>\$360,000</b>	<b>\$435,000</b>	<b>\$12,020,268</b>	

Note 1: The CCA includes IA costs and in-kind costs.

Note 2: The CCAs do not include IA costs as in-kind.

Note 3: Recipient has not yet submitted an interim FFR.

Source: EPA CCAs and FFRs prepared by GWA and GEPA.

Administrative conditions in all three awards inform the recipient that records for actual in-kind costs will not be provided, and instruct the recipient to report total in-kind costs on the FFRs. Region 9 has not provided the actual in-kind and IA amounts expended to GWA and GEPA for reporting in the FFRs. The Cincinnati Finance Center has procedures established for recipients to obtain data for use in reporting in-kind data on their FFRs, but Region 9 has not notified recipients of this procedure. As a result, Region 9's instructions result in inaccurate data being reported for in-kind costs.

Categories of in-kind costs were not always treated consistently in the CCAs. CCA M00T02611 includes contractor assistance, inter-personnel agreements and EPA technical assistance under the category of in-kind funding. CCA M00906309 and CCA M00906314 include only contractor assistance as in-kind funding. In addition, these CCAs include funding for IAs, but do not recognize these costs as in-kind costs.

## **Over \$12 Million of In-Kind and IA Costs May Have Been Misreported**

Region 9 did not provide adequate direction to recipients on reporting requirements for in-kind and IA costs. As a result, GWA and GEPA may have misreported over \$12 million in Region 9 in-kind and IA. GWA and GEPA cannot make accurate and informed certification on how CCA funds were expended without amounts for in-kind assistance on the FFRs. GWA and GEPA are responsible for tracking all expenditures on their CCAs but do not always have information on how Region 9 expended their CCA funds for in-kind and IA assistance.

## **Recommendations**

We recommend that the Regional Administrator, Region 9:

11. Provide GWA and GEPA guidance and instruction on how to obtain expended in-kind and IA cost data from the Cincinnati Finance Center and report actual in-kind and IA costs on the FFR.
12. Verify consistent treatment of in-kind and IA funding in the CCAs.

## **Agency Response and OIG Evaluation**

Region 9 concurred with Recommendations 11 and 12.

For Recommendation 11, Region 9 stated that:

EPA Region 9 Grants Management Office will work with the Project Officers for these CCAs to ensure GWA and GEPA are provided guidance and instruction on obtaining and recording

actual expended in-kind and IA cost data. This effort will be included in the awarding of the FY16 CCAs.

Region 9 provided a planned completion date of September 30, 2016. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendation 11. This recommendation will remain open pending completion of the proposed corrective action.

For Recommendation 12, Region 9 stated that:

EPA Region 9's Grants Management Office, Infrastructure Section, and Pacific Islands Office will ensure and verify consistent treatment of in-kind and IA funding in the CCAs beginning with this year's FY16 awards.

Region 9 provided a planned completion date of September 30, 2016. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendations 12. This recommendation will remain open pending completion of the proposed corrective action.

Region 9's complete response to the draft is in Appendix A.

# Chapter 6

## Region 9 Project Files Were Not Readily Accessible to Third Parties

Region 9 CCA project files were not readily accessible by others (third parties). EPA Records Management Policy CIO 2155.3 requires agency offices to maintain electronic records in an approved management system that allows staff to access the information for appropriate business reasons. The project officers did not follow EPA records management policies and there is no assurance that relevant documents and other information are properly stored and easily accessible. We were only able to obtain information piecemeal, making it difficult to determine the adequacy of project officer performance. As a result, it was difficult to assure that Region 9 was effectively monitoring the \$67 million awarded to Guam.

### Requirements for Project Officer Files

Records Management Policy CIO 2155.3 states each office within the EPA is required to establish and maintain a records management program with the following minimum requirements:

- Create, receive and maintain records providing adequate and proper documentation and evidence of the EPA's activities.
- Manage records in any format.
- Maintain electronic records in an approved electronic records system.
- Ensure non-electronic records are managed appropriately in paper-based official record-keeping systems that facilitate preservation, retrieval, use and disposition if they are not appropriate for scanning (or digitization).
- Maintain records so that they can be accessed by staff who need to know information for appropriate business reasons.

Section 1.3 of the EPA's Assistance Agreement Almanac states that project officers must keep files for each of their executed grants. The file should include both official records and non-official copies of specified administrative records, such as the grant award document and amendments. Some administrative and programmatic records—such as applications, emails, electronic correspondence, funding recommendations, awards, administrative and programmatic monitoring reports, FFRs, and vouchers—are maintained in electronic systems like the Integrated Grants Management System and Compass. These systems do not currently meet the requirements for an electronic record-keeping system, so any records must be printed out and captured in a paper record-keeping system or in an approved electronic system.

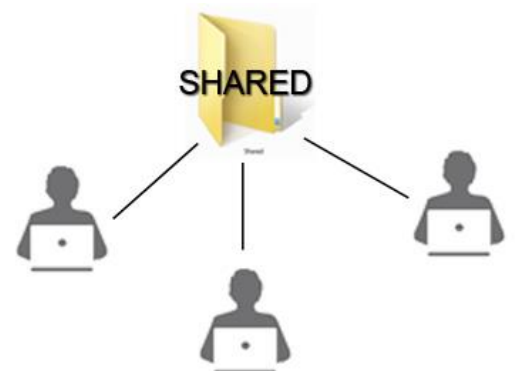
The EPA's Records Management Manual, February 2007, states that an office may choose to maintain specific types of records in a central location while maintaining other types of records at individual work stations. Records maintained at individual work stations should be required to be identified in the record-keeping system so that everyone in the office can locate the records. Computer drives, backup tapes and software applications such as Lotus Notes are not recognized record keeping systems. However, in the absence of an electronic record-keeping system, offices may establish network directories using the agencywide file structure to facilitate access and retrieval of the electronic copy, while maintaining the record copy in a paper record-keeping system.

## Region 9 Project Files Were Not Readily Accessible

The project officer files were maintained on their computer desktops and were not readily accessible by others. As a result, Region 9 staff did not comply with records management policies.

During the course of the audit, the OIG requested the CCA project officer files. Official hardcopy project officer files are no longer maintained. Instead, the project officers store data electronically in multiple ways. At this time, there is no central database for project officer files that would provide access for an independent third party review. The Region 9 project officers readily provided data to the OIG upon request. However, the issue remains that project files were not readily available for third-party review.

The GEPA project files are mostly electronic and maintained on the project officer's computer hard disk, not a share drive. Project files are organized by program, with work plans included with each funding recommendation. Deliverables are in an integrated report. There are large volumes of email correspondence that is not organized. Also, other Region 9 staff have GEPA-related files. The GEPA project officer stated there used to be challenges with maintaining electronic files on the share drives due to antiquated technology and a lack of share drive space. This caused the project officers to keep project files on their work computers. The new Sharepoint software allows for more space on common drives, and the project officer believes it is now time to start putting project files on the share drive.



Graphic illustrating the shared drive concept the project officer referred to. (EPA OIG image)

The GWA project officer is relatively new to managing Pacific Territory CCAs, and his project files are maintained electronically on the share drive. The project officer uses his email as a filing system for things in process and items he believes are less important. The GWA project officer also maintains hard copies of key



documents to supplement his electronic files. The project officer was not aware of any formal system for project officer electronic files.

While the Region 9 project officers have been utilizing the electronic format, they have not ensured that relevant documents and other information are stored in an organized and reviewable location that is easily accessible.

## **Limited Access to Files Makes It Difficult to Assess Project Officer Performance**

The OIG obtained limited access to the project files for GEPA or GWA. The project officer files were not readily available for OIG review. We were only able to obtain information piecemeal, making it difficult to determine the adequacy of project officer performance. As a result, it was difficult to assure that Region 9 was effectively monitoring the \$67 million in CCAs.

## **Recommendations**

We recommend that the Regional Administrator, Region 9:

13. Require Region 9 project officers to implement the EPA's Records Management Manual policies concerning electronic project officer files.
14. Plan and implement a common filing repository for territory agreement information to allow accessibility for third-party review.

## **Agency Response and OIG Evaluation**

Region 9 concurred with Recommendations 13 and 14 and stated that "the Sharepoint site, a standard operating procedure meeting EPA records management protocols, will be developed" September 30, 2016. Region 9 later responded on February 25, 2016 that:

EPA's HQ and regional offices are developing a national workgroup to explore the feasibility for a national electronic filing system which would include all aspects of the grant file (programmatic, administrative and financial). The National workgroup has been formed and had its first meeting on November 12, 2015. This action has been met and is considered complete.

The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendations 13 and 14. These recommendations will remain open pending completion of the proposed corrective actions.

Region 9's complete response to the draft is in Appendix A.

# Chapter 7

## Region 9 Needs to Ensure Reliability of GEPA Safe Drinking Water Information System Data

GEPA has significant periods for which data was not entered into the Safe Drinking Water Information System (SDWIS). SDWA Sections 1413(a)(2) and (a)(3) require states and territories to monitor drinking water systems and report to the EPA through SDWIS on a quarterly basis. GEPA's SDWIS backlog of un-entered data occurred due to turnover and a lack of training. Inaccurate and incomplete SDWIS data leads to concerns about whether GEPA has achieved measurable protection of public health and the environment.

### States and Territories Required to Report Drinking Water Data to EPA

Under the Government Performance and Results Act, the EPA must set out strategic goals and objectives, and measures that will be used to assess progress toward meeting the goals and objectives. Under SDWA, states and territories monitor the drinking water systems within their jurisdictions to verify that each public water system meets standards for safe drinking water. Each state and territory, at its own option, may use any data system to collect the information necessary to run its Public Water System Supervision program.

SDWIS/STATE is a database designed by the EPA to help states run their drinking water programs. SDWIS/STATE is the state counterpart to the EPA's federal drinking water information system (SDWIS/FED). SDWIS/FED, which is the EPA's national regulatory compliance database for the drinking water program, includes information on the nation's 156,000 public water systems and violations of drinking water regulations. GEPA is required to enter drinking water data into its local SDWIS/STATE system, and that data is then uploaded into SDWIS/FED.

Under 40 CFR §31.40(a), grantees are responsible for managing the day-to-day operations of grant- and subgrant-supported activities. Grantees must monitor activities to assure compliance with applicable federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

The CCA M00906309 workplan requires GEPA to:

- Maintain inventory of all public water systems in Guam in SDWIS/STATE and validate/submit federally required drinking water data to the EPA on a quarterly basis about public water systems for which GEPA has primacy enforcement authority.
- Maintain SDWIS/STATE.
- Revise the inventory to include new water sources and include new Public Water System Supervision.

The EPA's Annual Commitment System is a performance module located within the agency's Budget Automated System that is used to facilitate the tracking of significant program measures. In addition to National Program Manager and region-specific performance information, the system is used to provide information on state and tribal-specific contributions to commitments.

## **SDWIS Data Not Entered for Multiple Years**

There are multiple years of un-entered data by GEPA in SDWIS. The GEPA administrator stated that SDWIS data was backlogged at least 3 years. A new SDWIS administrator was hired in 2013. The new administrator addressed current SDWIS data entry needs, but did not address the backlog of un-entered data, and separated from GEPA after a year.

Region 9 agreed that there are backlogs in entering GEPA data into SDWIS/FED. The project officer noted the following in the 2011 through 2013 End of Year reports:

- **FY 2011:** GEPA did not have a competent SDWIS administrator and GEPA was not entering data into SDWIS/STATE or uploading information into SDWIS/FED.
- **FY 2012:** GEPA had violations it was not reporting in SDWIS; compliance (violation data) was determined separately and reported manually by spreadsheet.
- **FY 2013:** There was a backlog of data that needed to be entered into the system, and although significant progress had been made with the SDWIS system, more effort was necessary to ensure that all violations made it into the database.

The data backlogs were caused by staffing issues. Our audit determined that one GEPA SDWIS administrator did not perform his data entry duties because it was not a priority. Another administrator focused on current data entry but did not address prior year backlogs. GEPA did not have a SDWIS administrator for 6 months and did not enter data into the system during that period. The current GEPA SDWIS administrator has yet to be trained. Due to high turnover in the SDWIS administrator position, cross-training of SDWIS duties is imperative.

The Region 9 SDWIS/FED coordinator and the supervising environmental engineer agreed that the only way to ensure that complete and accurate data going into SDWIS/FED from Guam was to perform regular system data verifications and provide on-site training for local agency staff. Region 9 needs to improve its oversight of Guam SDWIS data. The Region 9 SDWIS/FED coordinator admitted data verification had not been completed on the Pacific Territories systems from

2001 forward. The Region 9 SDWIS/FED coordinator stated that Region 9 management had informed him that onsite data verification and training could not be performed because travel to the territory would be cost prohibitive.

## Potential Risk to Human Health and the Environment

Due to the large gaps of missing GEPA SDWIS data, there is no way to determine whether GEPA is in compliance with SDWA requirements. Therefore, the risks to human health and the environment are unknown.

The 2006 Drinking Water Data Quality Analysis and Action Plan is the most recent Data Quality Analysis and Action Plan posted on the EPA's website. On its website, the agency stated that it considered non-reported violations to be a serious problem that could have public health implications at many levels. Information and analyses based on incomplete data in SDWIS/FED compromise the EPA's ability to determine if and when it needs to take action against noncompliant systems, to oversee and evaluate the effectiveness of state and federal programs and regulations, to alleviate the burden on states, and to determine whether new regulations are needed to further protect public health. This concern with non-reporting has continued, as Region 9's 2014 SDWIS Data Quality Report notes that a lack of reported SDWIS/FED violations does not necessarily mean that an entity's water systems are in full compliance with all regulations.



A glass of drinking water from a faucet.  
(EPA photo)

The EPA's Drinking Water Enforcement Response Policy prioritizes enforcement activities toward drinking water systems with the most serious violations to return those systems to compliance as quickly as possible. The policy states that the EPA, in its work to protect the public's access to clean and safe drinking water, needs to be especially vigilant about noncompliance that has the potential to affect children, such as violations at schools and day care centers.

The EPA has recognized GEPA's ongoing staffing and training challenges related to SDWIS data management. Since 2014, EPA staff have been working with GEPA to address these challenges.

## Agency Actions During Course of Audit and Prompted by OIG Work

In July 2014, the EPA issued a letter to GEPA regarding the vacancy of the SDWIS database administrator and GEPA's "ability to meet the commitments under the grant workplan and maintaining primacy for the Public Water System Supervision Program." The EPA expressed "concern about the backlog of data

that needs to be entered into SDWIS in order to accurately reflect water system compliance with SDWA requirements.”

In April 2015, the EPA issued a warning letter to GEPA regarding SDWIS database management. The warning letter requested clarification on the status of filling the SDWIS database administrator position. The letter stated that EPA had not received a written response to the letter, dated July 30, 2014, addressing a plan and schedule for: (a) training of the new SDWIS database administrator; (b) submittal of quarterly uploads; and (c) input of large backlog of data into SDWIS. The July 30, 2014, letter suggested that GEPA hire part-time (or temporary) staff to complete the input of historical data. The plan and schedule should indicate how GEPA intends to address the workload.

The warning letter stated that:

If a grantee materially fails to comply with any term of an award, whether stated in Federal statute, regulation, an assurance, a notice of award or elsewhere, EPA may take one or more of the following actions:

- (1) Temporarily withhold cash payment pending correction of the deficiency by the grantee,
- (2) Disallow all or part of cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current grant award for the grantee’s program,
- (4) Withhold further awards, or
- (5) Take other remedies that may be legally available.

GEPA responded to the EPA’s July 2014 and April 2015 letters in May 2015 by submitting the following:

1. Training plan for the new SDWIS database manager.
2. Quarterly plan for upload of SDWIS data.
3. Backlog input plan for 2012 and prior years.

The EPA accepted GEPA’s response in August 2015.

In December 2015, Region 9 stated that:

GEPA has been providing regular quarterly uploads to SDWIS/Fed for the past year. The Region 9 SDWIS Coordinator monitors quality of GEPA’s data and works with GEPA’s SDWIS staff to address data quality issues. GEPA’s SDWIS staff, new to the position since fall 2014, has been concentrating on updating inventory records in order to ensure the accuracy of the inventory of systems. The Region 9 SDWIS Coordinator’s visit to Guam in

FY16 will provide in-person technical assistance on data management procedures, determine further training needs, and document data management procedures for addressing both the backlog and ongoing data requirements, in collaboration with GEPA.

## Recommendations

We recommend that the Regional Administrator, Region 9:

15. Require the project officer to oversee GEPA activities and confirm input of all un-entered SDWIS data to eliminate the backlog.
16. Require the project officer to oversee GEPA activities and confirm input of current SDWIS data in a timely, accurate and complete manner.
17. Train the GEPA SDWIS administrator and cross-train GEPA staff in SDWIS administrator duties.
18. Verify GEPA SDWIS data accuracy and completeness.

## Agency Response and OIG Evaluation

Region 9 concurred with Recommendations 15 through 18.

For Recommendation 15, Region 9 stated that:

The project officer currently oversees GEPA activities, and EPA Region 9 considers that portion of the recommendation complete. The project officer and staff from the Drinking Water Management Section have discussed the SDWIS data backlog with GEPA during regular program meetings and conference calls. The Drinking Water Management Section sent a grant enforcement warning letter to GEPA in April 2015 seeking a resolution to various data management-related concerns. GEPA has provided regular quarterly uploads to SDWIS/Fed since the beginning of 2010 up to the present, except for four quarters.... GEPA reportedly has a backlog of monitoring data to be recorded. The EPA Region 9 SDWIS coordinator plans to visit Guam in FY16 ... to evaluate the amount and type of backlog data, define data entry procedures, and train GEPA program staff on SDWIS functionality.

Region 9 provided a planned completion date of September 30, 2017. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will satisfy the intent of Recommendation 15. This

recommendation will remain open pending completion of the proposed corrective action.

For Recommendation 16, Region 9 later responded on February 25, 2016 that:

The project officer currently oversees GEPA activities, and EPA Region 9 considers that portion of the recommendation complete. GEPA has been providing regular quarterly uploads to SDWIS/Fed for the past year. The EPA Region 9 SDWIS coordinator monitors quality of GEPA's data and has worked with GEPA's SDWIS coordinator to address data quality issues. GEPA's SDWIS coordinator, who left GEPA January 29, 2016, had concentrated on updating inventory records to ensure the accuracy of the inventory of water systems. GEPA has not been reporting potential new violations, based on SDWIS data and upload record counts, but had recently indicated readiness to resume violation reporting, as needed. Pending GEPA hiring a new, full-time SDWIS coordinator, the EPA Region 9 SDWIS coordinator plans to visit Guam in FY16 to provide in-person technical assistance on data management procedures, determine further training needs, and document data management procedures for addressing both the backlog and ongoing data requirements, in collaboration with GEPA.

Region 9 provided a planned completion date of September 30, 2017. The OIG concurs with the agency's proposed actions, and, when implemented, the corrective actions will meet the intent of Recommendation 16. This recommendation will remain open pending completion of the proposed corrective action.

For Recommendations 17 and 18, Region 9 stated that:

The project officer and the Drinking Water Management Section have outlined several pathways to implement additional training for GEPA on this issue.... With the SDWIS coordinator position at GEPA vacant as of January 29, 2016, GEPA has the lead for ensuring that the position is filled by a qualified full-time, permanent employee and for designing and implementing a training plan for SDWIS data input; EPA Region 9 will provide technical assistance to GEPA in FY16 to implement its SDWIS responsibilities. If GEPA is unable to meet its responsibilities, EPA Region 9 will pursue additional grant enforcement remedies in FY16, including withholding future funding.

At the exit conference on February 17, 2016, Region 9 provided a planned date of September 30, 2016, for the completion of corrective actions for recommendations 17 and 18. The OIG concurs with the agency's proposed

actions, and, when implemented, the corrective actions will meet the intent of Recommendations 17 and 18. These recommendations will remain open pending completion of the proposed corrective actions.

Region 9's complete response to the draft is in Appendix A.



## **Status of Recommendations and Potential Monetary Benefits**

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	12	Work with the recipient, the Guam Legislature, and if necessary the U.S. Congress to enforce the utilization of all program income funds, as specified by 40 CFR Part 31 and the CCAs. If control of the program income funds are not returned to GEPA, the EPA should: (1) temporarily withhold cash payments; (2) partly suspend or terminate the current award; or (3) withhold future awards.	O	Regional Administrator, Region 9	9/30/16		
2	12	Verify the program income received by the Guam Legislature for GEPA-generated activities from 2010 to when the Guam Legislature relinquishes control. Take appropriate action to recover program income funding still controlled by the Guam Legislature up to \$2,015,719.	O	Regional Administrator, Region 9	9/30/16	\$2,015	
3	13	For the period from FY 2010 to when the Guam Legislature relinquishes control, obtain and review detailed GEPA transactions for program income receipts and expenditures for all program income funds to verify expenditures are allowable costs per 40 CFR Part 31, and take appropriate action to recover unallowable costs.	O	Regional Administrator, Region 9	9/30/17		
4	13	Recover \$316,858 in unallowable costs charged to program income funds.	O	Regional Administrator, Region 9	9/30/16	\$317	\$309
5	13	Work with GEPA and the government of Guam to determine if GEPA can be granted authority to directly receive and process income payments.	O	Regional Administrator, Region 9	9/30/16		
6	19	Review the CCAs to GWA, determine the appropriate method of payment, and update the CCAs accordingly.	O	Regional Administrator, Region 9	9/30/16		
7	19	Determine whether GWA should be designated "high risk," and, if so, require formal implementation of the reimbursement payment method with the Las Vegas Finance Center.	C	Regional Administrator, Region 9	1/29/16		
8	24	Require GWA to include in its contracts all federal/EPA-required contract terms, per 40 CFR Parts 31 and 35 and the CCAs. Freeze or revoke funding until federal terms are included.	O	Regional Administrator, Region 9	9/30/16		
9	24	Work with GWA to develop and include industry-standard language in its contracts.	O	Regional Administrator, Region 9	9/30/16		

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
10	24	Work with GWA to adopt the Engineer's Joint Construction Documents Committee's Standard Terms & Conditions and other supporting documents for construction projects in its contracts.	O	Regional Administrator, Region 9	9/30/16		
11	28	Provide GWA and GEPA guidance and instruction on how to obtain expended in-kind and IA cost data from the Cincinnati Finance Center and report actual in-kind and IA costs on the FFR.	O	Regional Administrator, Region 9	9/30/16		
12	28	Verify consistent treatment of in-kind and IA funding in the CCAs.	O	Regional Administrator, Region 9	9/30/16		
13	32	Require Region 9 project officers to implement the EPA's Records Management Manual policies concerning electronic project officer files.	O	Regional Administrator, Region 9	9/30/16		
14	32	Plan and implement a common filing repository for territory agreement information to allow accessibility for third-party review.	O	Regional Administrator, Region 9	9/30/16		
15	37	Require the project officer to oversee GEPA activities and confirm input of all un-entered SDWIS data to eliminate the backlog.	O	Regional Administrator, Region 9	9/30/17		
16	37	Require the project officer to oversee GEPA activities to confirm input of current SDWIS data in a timely, accurate and complete manner	O	Regional Administrator, Region 9	9/30/17		
17	37	Train the GEPA SDWIS administrator and cross-train GEPA staff in SDWIS administrator duties.	O	Regional Administrator, Region 9	9/30/16		
18	37	Verify GEPA SDWIS data accuracy and completeness.	O	Regional Administrator, Region 9	9/30/16		

<sup>1</sup> 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.

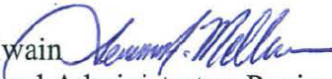
## Agency Response to Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

### MEMORANDUM

SUBJECT: EPA Region 9 Written Response to the Findings and Recommendations of Draft Report: EPA Region 9 Needs to Improve Oversight over Guam's Consolidated Cooperative Agreements  
Project No. OA-FY14-0035

FROM: Serena A. McIlwain  JAN 29 2016  
Assistant Regional Administrator, Region 9

TO: Kevin Christensen  
Assistant Inspector General for Audit  
Office of Inspector General

EPA Region 9 has reviewed the subject draft report. We appreciate the opportunity to provide comments on the report and we look forward to our continuing collaboration with the OIG to enhance EPA management of the Pacific Island Territories environmental and construction grant programs.

In summary, EPA Region 9 concurs with each of the OIG's recommendations in the draft report and has begun to implement many of them. In regards to the following statement from the OIG draft report: "More than \$67 million in CCA funds are not being administered efficiently and effectively due to inadequate oversight and a lack of internal controls," EPA believes that a better characterization would be that Guam agencies need to improve the management of EPA funded projects, and that EPA needs to expand our internal controls accordingly.

Our comments on the recommendations and findings are attached.

If you have any questions regarding this response, please contact Mike Montgomery, Assistant Director, Water Division at (415) 947-3537 and regarding the audit, please contact Magdalen Mak, Audit Follow-up Coordinator, EMD-4-1at (415) 972-3773.

Attachment

cc: Michael D. Davis, Director, OIG  
Heather Layne, Project Manager, OIG  
Jennifer Hutkoff, Auditor, OIG  
Jan Lister, Auditor, OIG

EPA Region 9's Comments on the OIG's Draft Report:  
EPA Region 9 Needs to Improve Oversight Over Guam's Consolidated Cooperative Agreements

OIG Recommendations

1. *Work with the recipient, the Guam Legislature, and if necessary the U.S. Congress to enforce the utilization of all program income funds as specified by 40 CFR Part 31 and the CCAs. If control of the program income funds are not returned to GEPA, the EPA should: (1) temporarily withhold cash payments; (2) partly suspend or terminate the current award; or (3) withhold future awards.*

Responsible: Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: The project officer has aggressively pursued resolution on this topic since 2012. The project officer has helped GEPA identify the specific sections of Guam law that need to be changed to implement this recommendation, but GEPA has not taken necessary steps to resolve the issue. EPA Region 9 will pursue additional grant enforcement if the recipient fails to make progress and/or resolve the issue before FY17.

2. *Verify the program income received by the Guam Legislature for GEPA-generated activities from 2010 to when the Guam Legislature relinquishes control. Take appropriate action to recover program income funding still controlled by the Guam Legislature up to \$2,015,719.*

Responsible: Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: See response to item 1, above.

3. *For the period from FY 2010 to when the Guam Legislature relinquishes control, obtain and review detailed GEPA transactions for program income receipts and expenditures for all program income funds to verify expenditures are allowable costs per 40 CFR §31, and take appropriate action to recover unallowable costs.*

Responsible: Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: The project officer has requested this documentation from GEPA several times, commencing with a February 14, 2012, letter to GEPA. EPA Region 9 will continue to work with GEPA to obtain this information and take appropriate action to review income and expenditures and, if necessary, recover unallowable costs in FY17.

4. *Recover \$316,858 in unallowable costs charged to program income funds.*

Responsible: Grants Management Office (EMD) + Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: EPA Region 9 issued a grant enforcement letter on September 29, 2015, disallowing \$309,000 in settlement costs from the Air Pollution Control program income fund. EPA Region 9 has given GEPA six months to either replenish the funds to the account from non-federal

sources or EPA Region 9 will seek to recover the funds. EPA Region 9 will pursue a similar remedy for the additional travel costs questioned in the OIG report by the end of FY16.

5. *Work with GEPA to determine if it can be granted authority to directly receive and process income payments.*

Responsible: Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: The project officer has raised this issue with GEPA and will pursue additional information and meet with the various GovGuam stakeholders in FY16 to determine if this recommendation can be implemented.

6. *Review the CCAs to GWA, determine the appropriate method of payment, and update the CCAs accordingly.*

Responsible: Grants Management Office (EMD) + Infrastructure Section (WTR)

Concurrence: EPA Region 9 concurs with the recommendation and, to ensure adequate internal control and oversight, has determined the appropriate method of payment will continue to be the advance method with special award conditions.

Status: Region 9's water program will work with the Grants Management Office to ensure implementation of this recommendation with the award of the current year's CCAs in late summer of FY16. As recommended by the OIG, the Region will draft a note to the CCA files summarizing the method and ensure the grantee's CFO is properly instructed of the method and processing.

7. *Determine whether GWA should be designated "high risk," and, if so, require formal implementation of the reimbursement payment method with the Las Vegas Finance Center.*

Responsible: Grants Management Office (EMD) + Infrastructure Section (WTR)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: At this time the comprehensive suite of programmatic grant conditions included in the GWA CCA provides adequate controls and oversight on the grantee. Also, operating the water infrastructure program on a reimbursement basis would unnecessarily reduce overall performance and effectiveness of federal grant funding. Therefore, the Region does not intend to designate GWA as "high risk" at this time, but will continue to scrutinize GWA's performance closely.

8. *Require GWA to include in its contracts all federal/EPA-required contract terms, per 40 CFR Parts 31 and 35 and the CCAs. Freeze or revoke funding until federal terms are included.*

Responsible: Infrastructure Section (WTR)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: As is mandated by current CCA grant conditions, EPA Region 9 will continue to review all GWA contracts before approving them for execution and will ensure that all federal/EPA

required contract terms, per 40 CFR Parts 31 and 35 and the CCAs are incorporated beginning immediately.

9. *Work with GWA to develop and include industry-standard language in its contracts.*

Responsible: Infrastructure Section (WTR)

Concurrence: EPA Region 9 concurs with this recommendation.

Status: EPA Region 9 has initiated discussions with GWA and with the Guam Attorney General's Office to amend and enhance GWA contracts to include industry standard language and specifications.

10. *Work with GWA to adopt the Standard Terms and Conditions and other supporting documents for construction projects developed by the Engineer's Joint Construction Documents Committee in its contracts.*

Responsible: Infrastructure Section (WTR)

Concurrence: EPA Region 9 concurs with this recommendation.

Status: In concert with the efforts described above for Recommendation 9, EPA has already begun discussion with GWA and the Guam Attorney General's Office and will continue to encourage GWA to adopt the EJCDC's Standard Terms and Condition and other supporting documents for construction projects into its contracts.

11. *Provide GWA and GEPA guidance and instruction on how to obtain expended in-kind and IA cost data from the Cincinnati Finance Center and report actual in-kind and IA costs on the FFR.*

Responsible: Grants Management Office (EMD) + Infrastructure Section (WTR) + Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with this recommendation.

Status: EPA Region 9 Grants Management Office will work with the Project Officers for these CCAs to ensure GWA and GEPA are provided guidance and instruction on obtaining and recording actual expended in-kind and IA cost data. This effort will be included in the awarding of the FY16 CCAs at the end of FY16.

12. *Verify consistent treatment of in-kind and IA funding in the CCAs.*

Responsible: Grants Management Office (EMD) + Infrastructure Section (WTR) + Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with this recommendation.

Status: EPA Region 9's Grants Management Office, Infrastructure Section, and Pacific Islands Office will ensure and verify consistent treatment of in-kind and IA funding in the CCAs beginning with this year's FY16 awards at the end of FY16.

*13. Require Region 9 project officers to implement the EPA's Records Management Manual policies concerning electronic project officer files.*

Responsible: Pacific Islands Office (LND) + Infrastructure Section (WTR)

Concurrence: EPA Region 9 concurs with this recommendation.

Status: EPA program offices have begun exploring a Sharepoint or similar tool where all award-related documents can be stored and easily shared among the various offices involved. In addition to the Sharepoint site, a standard operating procedure meeting EPA records management protocols will be developed by the end of FY16 to ensure consistent records management procedures across the 11+ programs involved in the consolidated cooperative agreements, to be coordinated by the project officers.

Additionally, in August 2015, EPA's national Grants Management Council agreed to develop a timetable with milestones and to identify and allocate resources for adopting electronic records management for all 10 EPA Regional Offices. As a result, the Office of Grants and Debarment, in collaboration with OEI, formed a national work group to identify and evaluate options from a "One EPA" perspective for an agencywide electronic grants records system. This system would include all aspects of the grant file (programmatic, administrative and financial). Action on this topic is expected in FY16.

*14. Plan and implement a common filing repository for territory agreement information to allow accessibility for third-party review.*

Responsible: Pacific Islands Office (LND) + Infrastructure Section (WTR)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: See response to item 13, above.

*15. Require the project officer to oversee GEPA activities and confirm input of all un-entered SDWIS data to eliminate the backlog.*

Responsible: Pacific Islands Office (LND) + Drinking Water Management Section (WTR)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: The project officer currently oversees GEPA activities, and EPA Region 9 considers that portion of the recommendation complete.

The project officer and staff from the Drinking Water Management Section have discussed the SDWIS data backlog with GEPA during regular program meetings and conference calls. The Drinking Water Management Section sent a grant enforcement warning letter to GEPA in April 2015 seeking a resolution to various data management-related concerns. GEPA has provided regular quarterly uploads to SDWIS/Fed since the beginning of 2010 up to the present, except for four quarters (fourth quarter of 2011 through the second quarter of 2012, and the third quarter of 2014). GEPA reportedly has a backlog of monitoring data to be recorded. The EPA Region 9 SDWIS coordinator plans to visit Guam in FY16 (pending GEPA's hiring of a full-time permanent SDWIS coordinator) to evaluate the amount and type of backlog data, define data entry procedures, and train GEPA program staff on SDWIS functionality.



*16. Require the project officer to oversee GEPA activities and confirm input of current SDWIS data in a timely, accurate and complete manner.*

Responsible: Pacific Islands Office (LND) + Drinking Water Management Section (WTR)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: The project officer currently oversees GEPA activities, and EPA Region 9 considers that portion of the recommendation complete.

GEPA has been providing regular quarterly uploads to SDWIS/Fed for the past year. The EPA Region 9 SDWIS coordinator monitors quality of GEPA's data and has worked with GEPA's SDWIS coordinator to address data quality issues. GEPA's SDWIS coordinator, new to the position since fall 2014 and leaving GEPA as of January 29, 2016, has concentrated on updating inventory records to ensure the accuracy of the inventory of water systems. GEPA has not been reporting potential new violations, based on SDWIS data and upload record counts, but had recently indicated readiness to resume violation reporting, as needed. Pending GEPA hiring a new, full-time SDWIS coordinator, the EPA Region 9 SDWIS coordinator plans to visit Guam in FY16 to provide in-person technical assistance on data management procedures, determine further training needs, and document data management procedures for addressing both the backlog and ongoing data requirements, in collaboration with GEPA.

*17. Train the GEPA SDWIS administrator and cross-train GEPA staff in SDWIS administrator duties.*

Responsible: Drinking Water Management Section (WTR) + Pacific Islands Office (LND)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: The project officer and the Drinking Water Management Section have outlined several pathways to implement additional training for GEPA on this issue, including contractor support, direct assistance from EPA Region 9, and assistance from the Safe Drinking Water Program at the CNMI Bureau of Environmental and Coastal Quality. With the SDWIS coordinator position at GEPA vacant as of January 29, 2016, GEPA has the lead for ensuring that the position is filled by a qualified full-time, permanent employee and for designing and implementing a training plan for SDWIS data input; EPA Region 9 will provide technical assistance to GEPA in FY16 to implement its SDWIS responsibilities. If GEPA is unable to meet its responsibilities, EPA Region 9 will pursue additional grant enforcement remedies in FY16, including withholding future funding.

*18. Verify GEPA SDWIS data accuracy and completeness.*

Responsible: Drinking Water Management Section (WTR)

Concurrence: EPA Region 9 concurs with the recommendation.

Status: See response to items 16 and 17, above.

## General Comments and Findings

- 1) At a Glance Section – The draft report states that “more than \$67 million in CCA funds are not being administered efficiently and effectively due to inadequate oversight and a lack of internal controls.”

EPA believes that a better characterization would be that Guam agencies need to improve the management of EPA funded projects, and that EPA needs to expand our internal controls accordingly. EPA Region 9 believes the factors contributing to the CCA funds not being utilized efficiently and effectively include: limited institutional capacities and skills at GWA and GEPA and difficulty in attracting and retaining qualified staff, which have led to a pattern of underperformance that is only recently beginning to change.

EPA Region 9 subjects each of Guam’s CCAs to a comprehensive regimen of internal controls and oversight beyond that commonly imposed on comparable agreements. For example, the CCA’s are subject to a suite of programmatic grant conditions to ensure all program funded projects address the intended purpose of protecting human health and the environment. The awards to GWA mandate EPA review and approval of each step of project selection, development and implementation. Further, EPA Region 9’s project officers provide hands-on technical assistance, and an in-kind services contractor to help build systemic and sustainable technical, managerial and financial capacity at the utility. Nevertheless, we agree Guam agencies need to improve the management of EPA funded projects, and EPA will expand our internal controls consistent with the OIG’s recommendations.

- 2) Chapter 3, (Page 16) Inconsistent Terms and Conditions on Agreement Payment Requirements, Awards to GWA – The report reads, “ CCA M96902611 and CCA M96902615 included a programmatic condition requiring the project officer to perform review and approval of *reimbursement* requests for project costs (*reimbursement method*). For both agreements, GWA’s actual draw practice is the advance method....”

The draft report as written is inaccurate in that the referenced programmatic condition does not mention *reimbursement* requests; it uses the term *payment* requests.

EPA Region 9 uses the advance method (“which allows the recipient to request payment of grant funds before outlays are made” – pages 14-15 of this report) with special award conditions, as described in the report on page 14.

- 3) In Chapter 3, (page 16) Confusion Regarding Payment Method Required, in the third paragraph the report references payment requests for payroll.

These payment requests and the confusion resulting from them were associated with grants outside the scope of this report.

## ***Distribution***

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