THE PRESIDENT'S FISCAL YEAR 2014 BUDGET: ADMINISTRATION PRIORITIES FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

(113–19)

HEARING

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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May 17, 2013

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment

FROM: Staff, Subcommittee on Water Resources and Environment

RE: Hearing on "The President's Fiscal Year 2014 Budget: Administration Priorities for the U.S. Environmental Protection Agency."

PURPOSE

On Wednesday, May 22, 2013, at 2:00 p.m., in 2167 Rayburn House Office Building, the Water Resources and Environment Subcommittee will meet to receive testimony from the U.S. Environmental Protection Agency (EPA) on the Agency's proposed budget and program priorities for Fiscal Year (FY) 2014.

Similar to other budget hearings held by the Subcommittee, this hearing is intended to provide Members with an opportunity to review EPA's FY 2014 budget request, as well as Administration priorities for consideration in the Subcommittee's legislative and oversight agenda for the first session of the 113th Congress.

BACKGROUND

The President's budget request for the Environmental Protection Agency is $8.2 billion, $296 million less than the FY 2012 enacted level of funding.

Clean Water Act

The Federal Water Pollution Control Act (commonly known as the Clean Water Act (CWA)), as amended in 1972 by P.L. 92-500, in 1977 by P.L. 95-217, in 1981 by P.L. 97-117, and in 1987 by P.L. 100-4, provides for a major federal-state program to protect, restore, and maintain the quality of the Nation's waters. The Act generally has two major areas of emphasis: regulatory provisions that impose progressively more stringent requirements on industries and municipalities to reduce the discharge of pollutants and that regulate the discharge of dredged or

fill materials into wetlands, and funding provisions that authorize federal financial assistance for municipal wastewater treatment plant construction. Additional areas emphasize planning and financial and technical assistance for various geographical regions and issues.

The CWA established a goal of eliminating the discharge of pollutants into navigable waters of the United States by 1985, with an interim goal of attaining water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water by 1983. "Navigable waters" is defined in the Act as "waters of the United States, including the territorial seas" -- a term that is interpreted to include certain nonnavigable tributaries and wetlands.

Considerable controversy exists over the term "navigable waters" and the associated scope of federal jurisdiction of the CWA over waterbodies. Some interests seek to preserve a balance of power and long-term cooperative relationship between the federal government and the states with regard to water management and water quality, and argue for a limited scope of federal jurisdiction over waterbodies. This would allow states to assert jurisdiction over state waters where the federal interest in those waters is limited or nonexistent. On the other hand, other interests argue for an expansive (and some, an unlimited) scope of federal jurisdiction over waterbodies, to include most any wet areas, because of their perceived need for a strong federal, top-down role in regulating activities affecting them. Many view a strong federal, top-down approach as undermining the federal-state partnership that Congress originally envisioned for implementing the CWA.

In 2012, EPA and the U.S. Army Corps of Engineers (Corps) developed and sent, to the Office of Management and Budget for regulatory review, a document entitled *Guidance on Identifying Waters Protected by the Clean Water Act*. This guidance aims to clarify the scope of federal jurisdiction under the CWA over waters in the United States. Many, however, view this guidance as going beyond merely clarifying the scope of federal jurisdiction under CWA programs, but instead, as increasing significantly the scope of the CWA's jurisdiction over more waters and more provisions of the Act as compared to practice up to now.

EPA has the basic responsibility for administering and enforcing most of the CWA, and is responsible for implementing the National Pollutant Discharge Elimination System (NPDES) permitting program under section 402 of the CWA. Under the NPDES program, it is unlawful for a facility to discharge pollutants into navigable waters, unless the discharge is authorized by and in compliance with an NPDES permit issued by EPA (or by a state, under a comparable approved state program).

EPA shares responsibility with the Corps for implementing the dredge and fill (wetlands) permitting program under section 404 of the CWA. Under the wetlands permitting program, it is unlawful for a facility to discharge dredge or fill materials into navigable waters, unless the discharge is authorized by and in compliance with a dredge or fill (404) permit issued by the Corps.

The CWA does not contemplate a single, federally-led water quality program. Rather, Congress intended the states and EPA to implement the CWA as a federal-state partnership

where the states and EPA act as co-regulators. The CWA established a system where states can receive EPA approval to implement water quality programs under state law, in lieu of federal implementation. These states are called authorized states. Under the CWA, 46 states currently have authorized programs.

EPA administers several water quality programs under the CWA, including those whose proposed budgets are discussed below.

Clean Water State Revolving Loan Funds

The Clean Water State Revolving Loan Fund (SRF) program is a highly successful program administered by states to provide capital, including low interest loans, to local communities around the country to make wastewater infrastructure improvements and to address other water quality needs. To date, Congress has provided $35 billion in grants to help capitalize 51 Clean Water SRFs. With the 20 percent state match and the fact these funds earn interest, receive loan repayments, and are used to secure state-issued bonds, the return on this federal investment has been in the order of 2.7 to 1. These federal capitalization grants have resulted in SRFs funding over $95.4 billion in loans to date for wastewater infrastructure projects, plus nonpoint source pollution control and estuary management projects.

For FY 2014, the President's budget is requesting $1.1 billion to further capitalize these funds. This is $371 million less than the FY 2012 enacted level of $1.5 billion.

During prior Congresses, the Subcommittee has held numerous hearings on financing water infrastructure projects. The hearings examined how our Nation can bridge the large funding gap that now exists between water infrastructure needs and current levels of spending, how we should fund water infrastructure projects in the future, and who should pay for it. The Subcommittee also has looked at reducing infrastructure needs and costs through improved asset management, so-called green infrastructure in appropriate circumstances, and the use of decentralized and nonstructural approaches for managing wastewater and stormwater.

The Subcommittee has looked at various mechanisms for funding water infrastructure projects, including continued support of the Clean Water SRFs, creating a national clean water trust fund, and advancing other infrastructure financing techniques, such as establishing a state clean water fund and an associated fee system.

In addition, the Subcommittee has evaluated potential innovative financing tools, including public or private funding and investment (project financing) mechanisms, to better enable local communities to finance wastewater (and drinking water) facilities mandated by state and federal environmental laws and regulations. This includes private financing through private activity bonds and other public-private financing arrangements.

Last Congress, the Subcommittee examined draft legislation the Subcommittee had prepared, entitled the Water Infrastructure Finance and Innovation Act (WIFIA). WIFIA would establish additional financing mechanisms to supplement the state revolving loan fund programs in addressing the need for funding water infrastructure projects and is in part modeled after the

Transportation Infrastructure Finance and Innovation Act (TIFIA) program implemented through the Secretary of Transportation. The WIFIA program would provide federal credit assistance in the form of direct loans and loan guarantees to finance significant water infrastructure projects and would be governed by the Federal Credit Reform Act of 1990.

Special Purpose Infrastructure Grants

Special purpose infrastructure grants are funds made available to address unique clean water regional needs. This total includes $5 million for U.S.-Mexico Border wastewater infrastructure projects, which is $8 thousand more than the FY 2012 enacted level. Budget also proposes $10 million for infrastructure assistance for Alaska Rural and Native Villages, slightly more than the FY 2012 enacted level of $ 9.9 million.

Nonpoint Source Funding

The Administration's budget request proposes $164.5 million for the Clean Water Act's nonpoint source grants program (section 319), which is the same as the FY 2012 enacted level for this program. Section 319 of the Clean Water Act is the primary source of EPA grant funding to states for the control of non-point sources of pollution, which is now the single largest source of impairment to the Nation's rivers, lakes, and near-coastal waters.

Geographic (Regional) Programs

- The President's Budget requests $300 million for the Great Lakes Restoration Initiative, which is $480,000 more than the FY 2012 enacted level of $299.5 million.
- The Chesapeake Bay program request is $72.9 million, $15.6 million more than the FY 2012 enacted level of $57.3 million.
- The Long Island Sound program request is $2.9 million, approximately $1 million less than the FY 2012 enacted level of $3.96 million.
- The Lake Champlain program request is $1.4 million, $1 million less than the FY 2012 enacted level of $2.4 million.
- The San Francisco Bay program request is $4.5 million, $ 1 million less than the FY 2012 enacted level of $5.84 million.
- The Puget Sound program request is $17.2 million, $12.8 million less than the FY 2012 enacted level of $30 million.
- The South Florida program request is $1.7 million, $354,000 less than the FY 2012 enacted level of $2.1 million.
- The Gulf of Mexico program request is $4.5 million, approximately $1 million less than the FY 2012 enacted level of $5.5 million.
- The Lake Pontchartrain program request is $948,000, $1 million less than the FY 2012 enacted level of $2 million.
- Requested funding for the National Estuary Program is $27.2 million, $213,000 more than the FY 2012 enacted level of $27 million.

State Water Quality Management (Section 106) Programs

The Administration's budget request proposes $258.7 million for state and tribal pollution control assistance programs under section 106 of the CWA. The section 106 program generally supports state and tribal water quality improvement and monitoring programs. The enacted level for this program in FY 2012 was $238.4 million.

The budget requests $15.1 million for state wetlands program development, the same as the FY 2012 enacted level..

The budget requests zero funding for beaches protection monitoring grants in FY 2014, $9.9 million less than the FY 2012 enacted level.

EPA Priorities, Community Challenges, and the Need for Greater Regulatory Flexibility Under the Clean Water Act

Communities face numerous regulatory pressures and inadequate infrastructure issues related to the Clean Water Act. The needs of municipalities to address aging and inadequate water infrastructure are substantial. According to studies by EPA, the Congressional Budget Office, and the Water Infrastructure Network, the cost of addressing our Nation's clean water infrastructure needs over the next 20 years could exceed $400 billion, roughly twice the current level of investment by all levels of government.

The needs are especially urgent for many areas trying to remedy the problem of combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs), often associated with wet weather conditions, and for communities lacking sufficient independent financing ability. In recent years, EPA (and activist groups, through citizens suits) has stepped up enforcement actions against many municipalities in an effort to force them to eliminate their CSOs and SSOs.

These enforcement actions have resulted in many larger cities and smaller municipalities entering into enforcement settlements, by signing consent agreements with EPA (and activist groups) to implement enforceable plans to eliminate their CSOs and SSOs. Many of these settlements are costly to implement, especially in the face of dwindling EPA infrastructure funds.

The projected total cost to larger municipalities of implementing the terms of each of these settlements could end up being as much as between $1 and 5 billion per city, or even more in some instances. There are approximately 746 communities, located in 31 states and the District of Columbia, with combined sewer systems and CSO issues potentially facing these sorts of costs.

Many more communities have SSO issues. EPA estimates that there are at least between 23,000 and 75,000 SSOs per year (not including sewage backups into buildings), amounting to an estimated three to ten billion gallons a year of untreated releases.

In recent years, other regulatory issues also have become national priorities, which are placing a further demand for resources on municipalities' utilities. For example, while our Nation's wastewater utilities already have removed the vast majority of conventional pollutants

from municipal wastewater, looking forward, they face significantly higher costs to remove the next increment of pollutants plus to control pollutants from urban stormwater runoff.

EPA has initiated a national rulemaking to establish a potentially far-reaching program to regulate stormwater discharges from newly developed and redeveloped sites and to add to or make other regulatory requirements more stringent under its stormwater program. This includes possibly expanding the scope of the municipal separate storm sewer systems regulatory program, establishing and implementing a municipal program to regulate stormwater discharges from existing development, imposing specific requirements for transportation facilities, and establishing and implementing stormwater regulations specific to the Chesapeake Bay watershed. This stormwater rulemaking, which EPA may propose in the next couple of months, could cost communities additional billions of dollars in regulatory compliance costs if promulgated, thereby imposing substantial additional regulatory and economic burdens on municipalities to comply.

In addition, EPA has begun zealously pressing the states and local governments to adopt a new framework for managing nutrients pollution, including crafting numerical nutrients criteria, setting strict numerical regulatory requirements, including numerical standards and TMDL load reduction goals for pollutant sources, and adopting stringent numerical nutrient standards and stringent effluent limits for nutrients in NPDES permits for municipal and other dischargers of nutrients. Stringent effluent limits for nutrients in NPDES permits could mean that many municipalities would have to install and operate, at great expense, state-of-the-art nutrient treatment and removal technologies at their wastewater treatment plants. These requirements will add an additional layer of regulatory requirements and economic burdens to communities.

Many communities are struggling to afford the Clean Water Act's numerous requirements being imposed on them by EPA. While schedules for compliance can sometimes be negotiated with the EPA, these are sometimes undone by other enforcement actions or judicial actions initiated by citizen suits. The result is that often communities are faced with a variety of overlapping clean water requirements and have difficulty affording the competing regulatory requirements and controlling the schedule of when work can be carried out to meet these requirements.

Although there are a number of federal programs to assist communities in meeting their clean water responsibilities, a large portion of these federal regulatory mandates are going unfunded by the federal government. Rather, local governments are being expected to pay for more and more of the costs of these mandates, with the result that local governments have made substantial increases in investments in public water and wastewater infrastructure in recent years and local communities and ratepayers are increasingly paying more. Today, local government provides the majority of the capital required to finance water infrastructure investments through loans, grants, bonds, and user fees.

Communities would like to have more flexibility to move forward in a cost-effective manner. Municipalities are seeking a more collaborative approach where EPA and state water regulators work more like partners than prosecutors with communities to yield better solutions that achieve the goal of eliminating sewer overflows and addressing other water quality issues

through the use of best engineering and innovative approaches at the lowest cost, resulting in the greatest environmental benefits.

It appears that EPA may be starting to listen to municipalities' concerns. In 2012, EPA announced a new integrated planning and permitting regulatory prioritization initiative to allow municipalities to prioritize their multitude of water quality requirements and address the huge unfunded costs associated with the growing number of requirements stemming from EPA water rules and enforcement actions.

The policy was initially received by some stakeholders with cautious optimism and hope that the framework will be a step forward in dealing with mounting financial obligations facing cities under the CWA. But many have said that it is too early to tell how EPA's integrated planning process will play out.

Some are concerned that EPA is not willing to limit its enforcement efforts against municipalities, which have been driving costly infrastructure upgrades to reduce stormwater and sewer overflows during heavy storm events. They would prefer that EPA provide more compliance assistance and identify pilot project communities to demonstrate how this framework can be successfully applied. They are concerned that a continued emphasis on an enforcement approach will undermine the flexibility EPA is ostensibly seeking to provide. Many also are concerned that EPA is resisting setting a clearer affordability threshold for determining municipalities' financial capabilities to pay for all of the unfunded mandates.

It remains to be seen how EPA's finalized integrated planning and permitting regulatory prioritization initiative will turn out.

Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly referred to as Superfund, was enacted to develop a comprehensive program to clean up the Nation's worst abandoned or uncontrolled hazardous waste sites. EPA has the major responsibility for carrying out this Act. The law makes designated responsible parties pay for hazardous waste cleanups wherever possible and provides for a hazardous substances trust fund, commonly referred to as the Superfund, to pay for remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable. Superfund is also available for responding to emergency situations involving releases of hazardous substances. In addition, the law was intended to advance scientific and technological capabilities in all aspects of hazardous waste remediation.

The total Superfund request is $1.2 billion, approximately $33.4 million less than the FY 2012 enacted level of $1.2 billion. Under the President's budget request, all of this funding will be derived from a payment from general revenues into the Superfund Trust Fund. Even though Superfund is a cost recovery statute, the Administration's budget requests (as it has the past few years) the reinstatement of the taxes that historically funded the Superfund Trust Fund, including taxes on oil, gas, and chemical feedstocks, and a corporate environmental tax, which funded the Superfund program between 1980 through 1995.

Superfund Response Actions

The President's budget requests the following amounts for Superfund response actions: $539.1 million for Superfund remedial actions, $25.9 million less than the FY 2012 enacted level of $565 million; and $187.8 million for Superfund emergency response and removal actions, $1.8 million less than the FY 2012 enacted level of $189.6 million.

Superfund Enforcement

The President's budget requests $185.3 million for Superfund enforcement activities. This is $1.5 million less than the FY 2012 enacted level of $186.7 million. The budget also includes $8.8 million for Superfund enforcement activities at federal facilities, $1.4 million less than the FY 2012 enacted level.

Brownfields

Brownfields are former industrial or commercial properties that contain contaminated soil (and possibly groundwater) that must be remediated before the land can be returned to productive use. Cleaning up and reinvesting in these properties encourages redevelopment of existing underutilized urban and suburban areas, reduces blight, protects the environment, and takes development pressures off greenspaces and working lands. The Brownfields Program is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfield properties.

Congress passed the Small Business Liability Relief and Brownfields Revitalization Act in 2002, which amended CERCLA by providing funds to states and local communities to assess and clean up brownfields; clarifying CERCLA liability protections for potential brownfields property investors; and providing funds to enhance state cleanup programs.

The Brownfields Program has resulted in numerous accomplishments, including leveraging more than $14 billion in brownfields cleanup and redevelopment funding from the private and public sectors and leveraging approximately 61 thousand new jobs. The Brownfields Program has been a major incentive for economic revitalization and urban redevelopment in many communities.

The Administration's budget request proposes $157.6 million for the Brownfields Program, including $85 million ($9.8 million less than FY 2012 enacted levels) for grants to localities to assess and cleanup brownfields, and $47.5 million ($1.8 million less than FY 2012 enacted levels) for states and Tribes to establish or enhance their response programs. In addition, $26 million ($2.3 million increase) is requested to fund contracts and EPA's brownfields program employees.

Oil Spill Response

CWA Section 311 provides EPA and the U.S. Coast Guard (USCG) with the authority to establish a program for preventing, preparing for, and responding to spills that occur in navigable waters of the United States. EPA is primarily responsible for spills in inland waters, and the USCG is primarily responsible for spills in coastal waters.

The Oil Spill Response program funds EPA's program for preventing, preparing for, and responding to oil spills. The President's budget requests $17.1 million, $2.4 million more than the FY 2012 enacted level of $14.7 million. This revenue is derived from the Oil Spill Response Trust Fund.

WITNESSES

Ms. Nancy Stoner
Acting Assistant Administrator, Office of Water
United States Environmental Protection Agency

Mr. Mathy Stanislaus
Assistant Administrator, Office of Solid Waste and Emergency Response
United States Environmental Protection Agency

THE PRESIDENT'S FISCAL YEAR 2014 BUDGET: ADMINISTRATION PRIORITIES FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, MAY 22, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 2:25 p.m., in Room 2167, Rayburn House Office Building, Hon. Bob Gibbs (Chairman of the subcommittee) presiding.

Mr. GIBBS. The Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure will come to order.

Today, we are having a hearing on "The President's Fiscal Year 2014 Budget: Administration Priorities for the U.S. Environmental Protection Agency." We have two witnesses on our first and only panel.

First, I want to just do a unanimous consent for any followup for the records that we may have. Seeing no objection, so ordered for that.

And I will start with my opening statement.

First of all, I would like to thank everybody for coming to the hearing today.

When Congress wrote the Clean Water Act and other Federal environmental statutes some 40 years ago, it envisioned the Federal Government and the States would be equal partners in solving the Nation's environmental problems. For many years, that Federal-State partnership has worked well.

However, in the past few years, we have seen a substantial change in the approach taken by the Environmental Protection Agency that is now serving to undermine the balance of the Federal-State partnership that has long existed. EPA is now insisting on imposing its Federal will on States, local government, and the private regulatory community with a heavy-handed, Federal, top-down, one-size-fits-all policy, regulatory approach that is taking away the flexibility they need to address their environmental issues.

EPA is aggressively moving forward on several regulatory fronts simultaneously, with the result that States and local governments all across the Nation, as well as the private regulating community,

are facing increasing regulatory enforcement and financial pressures to address a multitude of burdensome regulatory requirements that recently have become EPA priorities.

There has been an exponential increase in regulations coming out of the EPA related to this subcommittee's jurisdiction. These include more stringent and widespread regulation of stormwater discharges, nutrients, and other pollutants, which could lead to many communities having to install and operate, at great expense, state-of-the-art treatment, removal, and prevention technologies.

I am particularly concerned about the EPA's use of so-called guidance as a means of short-circuiting the process for changing Agency policy without following a proper transparent and unbiased rulemaking process. Much of this so-called guidance amounts to being de facto rules instead of advisory guidelines.

Many of these regulatory efforts are based on questionable science and questionable authority under the law. Many of the efforts stand to substantially increase the regulatory burdens for States and local governments, as well as businesses, especially small businesses.

All of these initiatives are piling up additional layers of regulatory requirements and economic burdens that our communities are having to somehow deal with. This is making a mockery of the administration's regulatory review initiative to reduce regulatory burdens in our country.

A large portion of these regulatory mandates are going unfunded by the Federal Government, with the result that many local communities and private entities are now increasingly struggling with how to pay for complying with these mandates. EPA's aggressive actions have created financial pressures and regulatory uncertainty for States, local governments, and the regulator community and have a chilling effect on the Nation's economy and job creation.

The EPA budget put forth from the administration for fiscal year 2014 does nothing to alleviate my concerns. While the EPA is imposing more unfunded regulatory burdens on communities, businesses, and citizens, the administration at the same time is calling for a reduction in spending for many of the programs that assist communities in their efforts to come into compliance with these regulations.

While the administration is willing to increase enforcement spending, it is cutting spending for compliance assistance efforts. And while the administration is willing to allow the EPA to continue imposing regulatory mandates, the administration is willing to cut financial assistance to our communities through the Clean Water SRF and other programs needed to help pay for complying with these mandates.

Hence, what we have here is a Federal agency that will add to the burden of rules and regulations and reduce programs to help folks come into compliance but will also put more boots on the ground to track down those who cannot come into compliance, with little or no benefit to the environment.

And what we have is an agency that has a reckless disregard for the privacy interests of both individual citizens and businesses. The EPA has amply demonstrated this recently when it leaked per-

sonal and confidential business information related to farmers not just once but twice. This is Government at its worst.

I want clean water as much as anyone, but I recognize that we have to have a strong economy so we can be able to afford to invest in new programs that regulations require. Today is not the day to put more burdens on the American people. We need to make significant progress in creating long-term jobs and a stronger economy before we can tolerate more expensive regulations.

At this time, I would like to recognize Mr. Bishop for any remarks he may have.

Mr. BISHOP. Thank you very much, Mr. Chairman. I appreciate you holding this hearing on the Environmental Protection Agency's fiscal year 2014 budget request.

Very few Federal agencies are as praised or as vilified as the EPA. Depending on your point of view, this agency, which was created by a Republican administration and charged by Congress with safeguarding the health of the public and the environment, is often portrayed either as the last safeguard of the natural environment or an overzealous impediment to unfettered industrial growth. I suppose the reality is somewhere in the middle, where this agency takes concerted effort in reaching a sustainable balance between the health of the public and the health of the environment and the health of the economy.

I have long made the case that you do not have to choose between economic growth and protection of public health and the environment. In my congressional district along the eastern tip of Long Island, the health of the economy and the health of the environment are one and the same. People and businesses are drawn to my district when the quality of the environment improves, whether through visits to our Long Island beaches or through supporting a robust fishing industry. Yet when the overall health of the Long Island environment declines, so, too, does the health of our local economy.

I hope we can agree on the need to balance healthy economic growth and protecting the health of the public and the environment. Unfortunately, ensuring this careful balance will be more difficult now that the EPA must face the budgetary cuts dictated by the recently passed Republican budget. Just yesterday, the House Appropriations Committee released its 302(b) allocation for EPA's appropriations bill that mandated an 18-percent cut below the fiscal year 2013 appropriated levels.

And the slide shows these cuts relative to fiscal 2013.

The number is about 20 percent below the President's request for the Agency for fiscal year 2014 and about 14 percent below current sequestered funding levels. An 18-percent cut to EPA's budget will result in over $1.4 billion less for the Agency for fiscal year 2014. To put this in perspective, this would decrease the EPA's overall budget to the actual level it received in fiscal year 1997, not reflecting adjustments for inflation.

But it gets worse. Over the remaining years of the House Republican budget, the EPA would face additional annual cuts ranging between 12 to 16 percent below the fiscal year 2013 CBO budget baseline.

It is without question that withholding resources from EPA will have an impact on the Agency's ability to carry out its statutory obligations. As the Agency witnesses will later testify, it has had to prioritize where to place its declining resources and has had to make tough choices in not funding programs and policies that are important to our businesses, our industries, and our communities.

For example, as we discussed in our April budget hearing related to the Corps of Engineers, a significant number of businesses and industries petitioned Federal regulatory agencies for Clean Water Act permits. However, under the Republican budget and the proposed appropriations level, both the regulatory office of the Corps and the permits division of the EPA would face potentially significant budget cuts. As a result, we should expect that Clean Water Act permit review times will take longer as a result of underfunded staffs.

Similarly, if the Republican budget discretionary cuts are implemented uniformly, we should expect continued cuts to other programs with widespread support from our communities, such as the Clean Water and Drinking Water State Revolving Funds, the Superfund cleanup program, and the Brownfields remediation program. In each example, our communities can point to specific projects that, if implemented, would improve the overall health of the community and protection of the environment. However, these projects continue to languish for lack of available funding.

I have heard others say that cutting the budget of EPA will not have an adverse impact on the environment because any decreases in Federal protection of the environment will be more than made up for by individual States. However, a report that I recently received from the Government Accountability Office reveals that quite the opposite is often true.

For example, GAO found that cuts to Federal grants that support State programs, such as section 106 of the Clean Water Act, can have equal adverse impacts on State environmental program implementation and are especially problematic in those States where local budgetary challenges are even more pronounced than the Nation's.

In specific examples, GAO identified several States where cuts to the Federal environmental grant programs will result in reductions to State environmental staff, cutting less critical programs, and increasing State fees. State officials noted that the effect from these cuts will include additional State permitting backlogs, decreased capacity to conduct permitting and monitoring activities, and the loss of compliance outreach and technical assistance activities.

Mr. Chairman, I ask unanimous consent to make this GAO report part of today's hearing.

Mr. GIBBS. So ordered.

[The report entitled "Funding for 10 States' Programs Supported by Four Environmental Protection Agency Categorical Grants," can be found on page 58.]

Mr. BISHOP. Thank you, Mr. Chairman.

In conclusion, Mr. Chairman, it seems that we are at a crossroads on finding the proper balance in protecting the health of our communities, our environment, and our local economies. One path would place fiscal austerity over all other priorities and would have

a significant and adverse impact on our communities, our local economies, and our industries, and place at risk the improvements we have made over the decades in protecting public health and the environment. The other path would call for tough choices but would recognize that wise investments in our Nation's infrastructure and our communities will have lasting rewards.

I welcome our witnesses here this afternoon, and I look forward to their testimony.

I yield back, Mr. Chairman. Thank you.

Mr. GIBBS. OK. At this time, I want to welcome our two witnesses.

Our first witness is Ms. Nancy Stoner. She is the Acting Assistant Administrator, Office of Water, the United States Environmental Protection Agency.

And our second witness is Mr. Mathy Stanislaus, Assistant Administrator of the Office of Solid Waste and Emergency Response, United States Environmental Protection Agency.

At this time, Ms. Stoner, the floor is yours. Welcome.

TESTIMONY OF NANCY K. STONER, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF WATER, U.S. ENVIRONMENTAL PROTECTION AGENCY; AND MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. STONER. Good afternoon, Chairman Gibbs, Ranking Member Bishop, and members of the subcommittee. I am Nancy Stoner. I am the Acting Assistant Administrator for the Office of Water at the U.S. EPA. Thank you for the opportunity to speak with you today about the President's fiscal year 2014 budget request for EPA's National Water Program.

The President's request reflects the EPA's ongoing efforts to protect the Nation's clean water and identify opportunities for savings in these challenging economic times. The requested level of $3.3 billion allows the National Water Program to continue to spur communities, improve infrastructure, drive innovation, spur technology, increase sustainability, and strengthen partnerships with States, tribes, and local governments.

One of the EPA's highest priorities is supporting communities in meeting their clean water and drinking water goals. One way we do this is through EPA's Clean Water and Drinking Water State Revolving Funds, or SRFs. These funds provide critical funding to States and local entities to improve wastewater and drinking water infrastructure and reduce water pollution.

The President's fiscal year 2014 budget request includes $1.095 billion for the Clean Water SRF and $817 million for the Drinking Water SRF. This funding will enable States and tribes to begin approximately 450 clean water and approximately 370 drinking water projects nationally.

The President's request, when combined with enacted appropriations, including the American Recovery and Reinvestment Act, totals approximately $20 billion invested by the Federal Government in the SRFs over the last 6 years.

The EPA is also working with municipalities across the country to expand and institutionalize the use of integrated planning that

considers a full range of infrastructure alternatives, including green infrastructure, so that priority investments are made first and at the lowest lifecycle cost.

Despite the fiscal challenges we face, supporting our State and tribal partners, the primary implementers of environmental programs, remains a priority for EPA. Funding for States and tribes through the State and Tribal Assistance Grants account, or STAG, is once again the largest percentage of the EPA's budget request, at nearly 40 percent in 2014.

Total National Water Program categorical grant funding for the fiscal year 2014 budget request is $558.9 million, a $14.9 million increase from the fiscal year 2012 enacted level.

The fiscal year 2014 request includes $258.7 million for water pollution control grants to States, tribes, and interstate agencies, an increase of $20 million over fiscal year 2012 levels. In fiscal year 2014, the EPA will designate $15 million of this increase for States to strengthen their nutrient management efforts. This will help States tackle nutrient pollution, which has caused serious environmental and human health issues while harming the economy. These additional funds will help ensure the effectiveness of State environmental programs and support economic growth.

Finally, the President's budget also requests continued funding for critical regional restoration and community programs in which the EPA works in close coordination with States and other stakeholders. These include programs working to restore the Chesapeake Bay, the Great Lakes, and America's urban waters.

Thank you, Chairman Gibbs, Ranking Member Bishop, and members of the subcommittee, for this opportunity to discuss the President's fiscal year 2014 budget request for EPA's National Water Program. The President's budget reflects the EPA's ongoing efforts to identify potential savings while continuing our commitment to the core mission of sustaining water quality, public health, and our economy.

We look forward to continuing our work with the subcommittee to ensure clean and safe water for all Americans.

I will be happy to answer any questions you may have.

Mr. GIBBS. Thank you.

Mr. Stanislaus, the floor is yours. Welcome.

Mr. STANISLAUS. Good afternoon, Chairman Gibbs, Ranking Member Bishop, and members of the subcommittee. I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response at the United States Environmental Protection Agency. Thank you for the opportunity to appear today to discuss EPA's proposed budget for OSWER's programs falling under the subcommittee's jurisdiction.

The President's fiscal year 2014 budget demonstrates that we can make critical investments to strengthen the middle class, create jobs, and grow the economy, while continuing to cut the deficit in a balanced way. The President's budget reinforces our firm commitment to keep America's communities clean and healthy, while also taking into consideration the difficult fiscal situation facing State, local, and tribal programs.

To clean up our communities, the President is proposing investments that clean up contamination and promote economic develop-

ment and job creation. The President's fiscal year 2014 budget proposes $156.3 million for OSWER's Brownfields program to support State and tribal cleanup programs and to support planning, cleanup, job training, and redevelopment of brownfields properties, especially in underserved and disadvantaged communities.

EPA's Brownfields program use this funding to successfully leverage economic investment. On average, nearly $18 is leveraged in private and public funding for every EPA dollar expended. And more than 85,000 jobs have been leveraged through brownfields project funding since the inception of the Brownfields program.

Another effort to help turn formerly contaminated sites into community assets and provide economic development and job creation opportunities is our RE-Powering America's Land Initiative, which was recently recognized by Harvard's Kennedy School as one of the top 25 innovations in the American Government. This is an initiative to work with energy developers and financiers to site renewable energy on contaminated properties. This has resulted in the installation of 250 megawatts of installed capacity, which can power approximately 35,000 homes across the United States.

The budget also requests $1.18 billion for Superfund cleanup efforts across the country, which represents a reduction from fiscal year 2012 enacted levels and reflects the hard budget choices that are being made. Superfund removal and homeland security program funding levels are maintained, with focused reductions associated with long-term remediation in the Superfund remedial program.

The value and benefit of Superfund resources are significant. Academic research published in the American Economic Review found Superfund cleanups reduced the incidence of congenital abnormalities by roughly 20 to 25 percent for those living within 5,000 meters of a site. And a study completed by researchers at Duke University and the University of Pittsburgh found that the deletion of sites from the national priority list of Superfund sites significantly raises the value of owner-occupied housing within 3 miles of a site by approximately 18.6 percent to 24.5 percent.

A reduction in the Superfund remedial program will result in only a limited number of new EPA-lead construction project starts in fiscal year 2014. EPA will balance its Superfund remedial pipeline while focusing on the completion of ongoing projects rather than new starts. The cumulative effect of funding reductions in the recent years will potentially delay construction work at approximately 40 to 45 new construction projects by the end of fiscal year 2014.

Notwithstanding the constraints on the appropriated funding levels, we have been particularly successful in leveraging cleanup funding through the use of responsible party settlements to establish site-specific special accounts. Through the end of fiscal year 2012, EPA has collected more than $4 billion, including interest, in more than 1,000 site-specific special accounts.

Of this amount, EPA has disbursed or obligated more than $2.5 billion for site response actions and developed a multiyear plan for nearly 100 percent of the remaining funds in the special accounts available. In total, through fiscal year 2012, EPA has secured more

than $37 billion in responsible-party commitments for site cleanup and reimbursement of past costs.

The Superfund removal and emergency response programs conducted or provided oversight for 428 EPA-led and responsible-party cleanup actions in fiscal year 2012. The fiscal year 2014 target for EPA-led removal actions is 170 and is the target for responsible-party removal actions, as well.

EPA's emergency response programs will continue to maintain capability to respond to imminent threats to human health, including incidents of national significance. EPA's oil spill program is designed to protect inland waterways through oil spill prevention, preparedness, and enforcement activities associated with more than 600,000 nontransportation-related oil storage facilities that EPA regulates. There are approximately 20,000 oil spills reported to the Federal Government on a yearly basis.

Recognizing the importance that this sector has brought to our economy and to our environment, the fiscal year 2014 budget requests a $2.5 million increase for OSWER's oil spill program, which would fund efforts to broaden and expand prevention and preparedness activities, particularly with respect to the inspection of high-risk facilities and the development and implementation of a third-party audit program.

Thank you, Mr. Chairman, and I look forward to your questions.

Mr. GIBBS. Thank you.

I will yield myself 5 minutes for the first questions.

Ms. Stoner, I am really concerned about the EPA's release, twice now, of animal livestock farmers around the country, I think about 18,000 of them, of their private emails, their private information, contact information, to environmental groups such as Earth Justice and the Natural Resources Defense Council and others. And I know that the EPA has requested that the information be sent back, that your agency has admitted they made a mistake.

I sent a letter, along with 16 other congressmen here, earlier in April requesting what your agency is doing to make sure this doesn't happen again. Of course, after I sent the letter, it happened again. And I haven't had a response, we haven't had a response back to the letter.

But, also, in the letter, we requested that a full investigation be held and people held accountable. Because, you know, these livestock farmers have to have trust in your agency with this information. And this could really be dangerous to their operations and their personal security and the security of their operations, because some of these groups sometimes are radicalized. And that is a concern.

So my first question is, you know, what are you doing about that to make sure it doesn't happen again? And are you holding an investigation? And will there be people held accountable?

Ms. STONER. Thank you, Mr. Chairman. I appreciate the opportunity to discuss this issue with you.

As you know, what did happen is that the Agency released information that we believed at the time was publicly available information. We had asked States only for publicly available information. Under the FOIA, all requesters are treated equally, in terms of the data being requested to them. And we did release that information.

And we believed, upon careful scrutiny of the information, that there was some information in there that there were privacy concerns associated with.

We have been in discussions with the agricultural community ever since then about that and have made redactions to that release to address those privacy concerns that they raised and that we take very seriously. We also requested the information back and have received it.

We are continuing to work to make sure that we have very thorough, proper FOIA training for everyone in the Office of Water, including on privacy issues like those that you asked about today, and have set up a regular group to meet with the agricultural community to discuss the data and how we should move forward together.

Mr. GIBBS. You said you asked for the information back?

Ms. STONER. That is correct.

Mr. GIBBS. OK. That is a little preposterous. I am sure that this information was probably sent out, copies were made, probably sent out to other organizations. Just be aware of that, that there might be instances of concerns.

But you are looking into it, are you actually doing a full investigation to make sure your personnel will have FOIA training, but I think it goes far beyond training. Is anybody being held accountable? Are there going to be any disciplinary actions or anything like that?

Ms. STONER. We believe we have dealt appropriately with this specific incident at issue, at this point. And we have redacted the information that we believe to be appropriate to be redacted at this time and have received back the earlier information. So we will be looking prospectively——

Mr. GIBBS. What did you do to handle it? You say you believe you handled it appropriately. What did you do?

Ms. STONER. Very carefully reviewed all of that information, discussed it with the agricultural stakeholders, among others——

Mr. GIBBS. Agricultural stakeholders. How about the people who work for you that disseminated that information?

Ms. STONER. Absolutely. We have had many discussions about that to ensure that the concerns that were raised by the agricultural stakeholders were ones that our staff is very cognizant of. And we will be ensuring, moving forward, that we take those types of concerns into account.

Mr. GIBBS. I think you should do as much as you can, because it is obvious what is going on in some other agencies. And there is a real lack of public trust and confidence in our Government right now, and things like this make people feel uneasy. And it can be, like I said, a very dangerous situation for those producers out there.

Ms. STONER. Yes. The public trust is very important to us, and we will be making sure that we are treating everyone fairly at EPA under the FOIA, as we are required to do.

Mr. GIBBS. And along those lines, also came up the issue about some of the Freedom of Information requests, that I saw some reports that some groups are being charged for those requests and some groups aren't. Is that a practice that the EPA is doing?

Ms. STONER. Again, we have policies under the FOIA about when to grant a fee waiver. And that will be part of the training, to ensure that everyone is fully briefed on those policies to make sure, again, that we treat everyone fairly.

Mr. GIBBS. OK.

Quickly—and my time is up, but I want to follow through on this. What are those policies to make sure that everybody is treated fairly? I mean, if some groups come in and ask for a Freedom of Information request and you deem it that is in the public interest, will you still charge a fee for those requests, for the paperwork? Do you have a set program, or everybody gets charged?

Ms. STONER. I believe that there are policies about treating, for example, the media differently than others. But we will be making sure that the policies that exist, which, in general, treat——

Mr. GIBBS. Could you send to the committee a copy of those policies?

Ms. STONER. We would be happy to follow up with you on that.

Mr. GIBBS. OK. Appreciate that.

Just before I yield to my ranking member, the letter that myself and 16 other Members of Congress sent to the Acting Administrator, I ask unanimous consent to put in the record.

Seeing none, so ordered.

[The information follows:]

Sent on April 17th

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TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
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CHAIRMAN
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HIGHWAYS AND TRANSIT
RAILROAD, PIPELINES AND HAZARDOUS MATERIALS

AGRICULTURE COMMITTEE
SUBCOMMITTEES
CONSERVATION, ENERGY AND FORESTRY
GENERAL FARM COMMODITIES AND RISK MANAGEMENT
DEPARTMENT OPERATIONS, OVERSIGHT, AND NUTRITION

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington DC 20460

Dear Acting Administrator Perciasepe:

On Tuesday, April 9th, the Environmental Protection Agency announced that they mistakenly released private information of thousands of farmers to environmental groups. We are dismayed by the total lack of regard for the protection and safety of the famers, their families, and their property.

In 2011, the EPA proposed a rule that requires contained animal feeding operations (CAFO's) owners to provide the EPA with specific information on their operation, such as location, and their personal contact information. However, due to backlash regarding privacy concerns the EPA withdrew their rule in July of 2012 and decided to work with state agencies to obtain pertinent information. In October 2012, three environmental groups filed a freedom of information (FOIA) request to the EPA for all information gathered related to CAFO's.

In response to the request the EPA haphazardly released the information they had collected from over 30 states. Instead of ensuring that all the private information was redacted before releasing to the public, the EPA only redacted information from ten of the states. The information EPA released also included private information on farmers that were not designated CAFO's and therefore exempt from having to report any of their information.

Even more concerning is the information that the EPA released include the personal home addresses, telephone numbers, and email addresses of the farmers. This information goes beyond what public information is available on CAFO operations. Although the EPA requested the information back from the groups that they released, there is no way of knowing what was done with this information, or if it was stored for later use.

This incompetent, or deliberate, release has placed the CAFO's and their owners at the risk of possible vigilantes. We demand that you hold a full investigation into how such an error could have been made and hold those responsible fully accountable.

We demand a copy of your entire investigation into this matter as well as what you are going to do to protect the farmers who have done nothing wrong. The EPA has made an egregious error

in not following through on their due diligence and we demand to know what steps you are taking to ensure this never happens again.

We expect a full response on this issue no later than April 26th, 2013.

Sincerely,

Bob Gibbs
Member of Congress

Steve Stivers
Member of Congress

Jim Jordan
Member of Congress

Stephen Fincher
Member of Congress

Vicky Hartzler
Member of Congress

Michael Turner
Member of Congress

Robert Latta
Member of Congress

Scott DeJarlais
Member of Congress

Patrick Tiberi
Member of Congress

Steve Daines
Member of Congress

Brad Wenstrup
Member of Congress

Bill Johnson
Member of Congress

Kristi Noem
Member of Congress

Rodney Davis
Member of Congress

Ted Yoho
Member of Congress

Michael Conaway
Member of Congress

Bob Goodlatte
Member of Congress

Mr. GIBBS. And I yield to Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chairman.

Mr. Stanislaus, I am going to start with you. I am very concerned about the Superfund and the inadequacy of funding to the Superfund. I mean, just to review, we have stopped taxing industries that manufacture and sell hazardous substances in 1995. Superfund was fully spent down in 2004. And since 2004, all Superfund cleanup activities have been funded by General Fund taxpayer-generated revenue.

And it seems to me we have an analogous situation; we have something, as you know, called the Oil Spill Liability Trust Fund. We tax those industries that refine and import petroleum. We tax them 8 cents a barrel. And so we are saying that if you are going to profit from the importation or sale of petroleum-related projects, you have to bear the burden of the cleanup if something goes awry. It is something that the Congress has authorized, something that the Congress leaves in place.

And so my question, I guess, to you but also to my colleagues is, why is it that we are willing to give the companies that manufacture and sell hazardous materials, why are we willing to give them a free pass and we are not willing to give other elements of the industry that same free pass?

So that is question number one to you, as I say, but I really am also asking it rhetorically of my colleagues.

And the second question is, what is the ongoing impact of the inadequacy of funding? My understanding is that we have 40 to 45 Superfund sites ready to go for construction, but we don't have sufficient funds to go there. And we have some 1,600 identified Superfund sites across the country that we are not addressing because of inadequate funding.

So if you could answer both those questions.

Mr. STANISLAUS. Sure.

With respect to those parties who are responsible for contamination of the site, within our program we pursue responsible parties as the path of first course.

The President has also proposed the reinstatement of the Superfund tax, focusing on those entities that are associated with the creation of Superfund sites.

Thirdly, we are working on putting in place a financial assurance mechanism. And we have identified a number of categories of industry, so that entities that have been associated with the contamination of Superfund sites and where Superfund has been used to clean up those sites, that those industries would have a financial assurance mechanism in place that, should contamination happen, we would have a private instrument to do the cleanup.

Mr. BISHOP. If I could interrupt you?

Mr. STANISLAUS. Yes, sure.

Mr. BISHOP. There exists, we all know, these so-called orphan sites——

Mr. STANISLAUS. Yes.

Mr. BISHOP [continuing]. Sites for whom we cannot either identify or pursue a responsible party. Of the 1,600 Superfund sites that have been identified, can you estimate how many of them are so-called orphan sites?

Mr. STANISLAUS. I don't have that number here, but I can get that to you. What I can say, of the backlog at the end of this fiscal year, those all would be in the orphan category.

Mr. BISHOP. They are all orphan sites, and if we are going to act on them, we are going to act on them with taxpayer-generated General Fund revenue, correct?

Mr. STANISLAUS. That is correct.

Mr. BISHOP. And whoever created the mess is going to walk away—well, has already walked away.

Mr. STANISLAUS. Well, I mean, though, the reason why——

Mr. BISHOP. Yes. The answer is yes.

Mr. STANISLAUS. Yes. And the reason why they are orphan sites, the responsible party is not around anymore for them to take responsibility for the cleanup.

Mr. BISHOP. Precisely.

Mr. STANISLAUS. Yes.

Mr. BISHOP. OK. Thank you.

All right. Ms. Stoner, you indicated in your testimony that even with reduced expenditures brought on by the fiscal climate we find ourselves in, that—and your measure of reduced expenditures was the President's budget.

Ms. STONER. Yes.

Mr. BISHOP. If that number were to be reduced an additional—by 18 percent, which is what the 302(b) allocation is that came out of the Interior Appropriations Subcommittee yesterday, would the department be able to continue to pursue and accomplish its core mission?

Ms. STONER. Obviously, that would be very difficult for us. And the programs that we run that are so important to the American public in ensuring that they have clean waters to swim in and safe drinking water, fish that they can eat, all of those programs that are so important to the American public, to the economy, and so forth. And we would have very serious difficulties.

There was a lot of concern expressed about our ability to work with our State partners, and we made a lot of choices in the President's budget for this year to continue programs uncut, like the 319 Nonpoint Source Program, or to actually increase programs, like the 106 program that gives money to the States to run their clean water programs, or the PWSS, which gives money to States to run drinking water programs.

With cuts like that, I don't know how we could continue to support that great work that our State partners do, working with the Agency to implement the Clean Water Act and Safe Drinking Water——

Mr. BISHOP. I have exceeded my time, but if I could just ask one more question. If I could ask each of you to provide the committee, with as much specificity as possible, the impact that implementation of an across-the-board 18-percent cut would have on the ability of the department to pursue its core mission.

Ms. STONER. Of course.

Mr. STANISLAUS. Yes.

Mr. BISHOP. Thank you very much.

I yield back, Mr. Chairman. Thank you very much.

Mr. GIBBS. Mrs. Capito?

Mrs. CAPITO. Thank you.

And I want to thank the witnesses for being here.

Ms. Stoner, the October 6th, 2011, and July 31st, 2012, *NMA* v. *Jackson* decision struck down the interagency memorandum of understanding and guidance and made clear that such attempts were outside of EPA's statutory authority and that the Corps alone can implement.

I am wondering, are you—and I have asked you this question before, but I would like an update. How is the EPA working to ensure that this is being implemented? Where are you on that?

Ms. STONER. So we are no longer relying on that document and on the implementation procedures that we had worked out with other Federal agencies that the Federal court struck down. That case is, of course, on appeal and is a matter in litigation.

We continue to work closely with other agencies, however, under the authorities of the Clean Water Act that authorize us to do so.

Mrs. CAPITO. OK. Thank you.

Guidance documents also have had significant impact on the issuance of the 402 permits. In West Virginia, for instance, we have 724 applications for NPDES permits for mining activities pending in January of 2013. To put that in perspective, we only had 306 applications pending in 2008.

What do you feel is a reasonable amount of time that a permit applicant should have to wait in order to secure a permit?

Ms. STONER. Some are more complex than others, but it is very important that the agencies work together effectively to issue those permits as rapidly as possible after ensuring they meet the requirements of the law.

Mrs. CAPITO. Are you doing anything to help with the backlog that exists right now to speed that up?

Ms. STONER. We absolutely are working very closely with our colleagues at the Corps and with our State colleagues, because, as you know, through Appalachia, the States are issuing the NPDES permits, to ensure that those permits are issued in compliance with the law.

Mrs. CAPITO. Well, you may be aware that I introduced a bill to try to make definitive the length of the process so we could have some predictability and stability in this.

So I am not sure what the future of that is, but that is something that we will be talking about hopefully in this subcommittee, sir.

The other court case that I would like to talk about is the *EPA* v. *Mingo Logan*.

Ms. STONER. Yes.

Mrs. CAPITO. And, as you know, I disagree with this decision, but the U.S. Court of Appeals upheld EPA's authority to retroactively veto a permit. As you know, this opinion has created widespread anxiety in the coal-mining industry. And EPA argued successfully that it has the authority to take away a 404 permit irrespective of whether the permit holder is complying with the terms of the permit.

But if we look back to the deliberations on the Clean Water Act originally, there were three hallmarks for permitting regulations that exist: One is uniformity, one is finality, and one is enforceability.

Do you agree that finality is an important consideration for permits? In other words, when they have been finally issued, are they finally issued?

Ms. STONER. So the court held that the 404(c) authority allows the withdrawal of a specification, so a particular location for the discharge of material, when certain findings are made. So the permit remains, and the permit allows continued mining at that operation as at others. But those specifications that we had moved to withdraw, the court found was appropriate under the statute itself. It was an interpretation of the statute itself, the Clean Water Act.

It is important to keep in mind, of course, that we use the 404(c) authority extremely rarely. So it is about 13 times ever in the history of the Clean Water Act, which has been 40-some years now, 41 this year I guess. So we use it very rarely, and we would only use it for particular instances of grave concern.

Mrs. CAPITO. Well, as you can imagine, this isn't just coal mining, it is other entities that are seeking these types of permits. And the chill of investment—if you feel that you have put 10 years, which this company did, into securing a permit, working it and reworking it, working under the permit, and then having it yanked out from under them after probably millions and millions of dollars of investment, you can imagine what that does to chill the investment in anything, not just coal mining, in the area.

I have a final question. In 2002, the EPA and Corps of Engineers adopted a joint regulatory definition of fill material. The current rule includes fill materials that, when placed in the waters of the U.S., had the effect of raising the bottom elevation or filling the water, and maintains the proper legal distinction between discharges between the 404 and the 402. However, EPA and the Corps have stated that they are now considering revising that definition.

What specific problems with the current rule is the EPA having?

Ms. STONER. We have no active discussions with the Corps on revising that rule at this time.

Mrs. CAPITO. OK. Thank you.

Mr. GIBBS. Ms. Kirkpatrick?

Mrs. KIRKPATRICK. Thank you, Mr. Chairman.

Ms. Stoner, the Navajo Nation EPA obtained primacy for the public water supply supervision program in 2000, and the Navajo Nation EPA has done a tremendous job of maintaining compliance over 164 drinking water systems. Grants in fiscal year 2014 are slated for reductions, although we hope that does not happen.

So I have two questions, but I am going to ask them together so you can answer them together. The first one is, how can EPA apply appropriate discretion to maintain resource investments in the continuation of the Navajo Nation EPA public water supply supervision? And then, what can be done to elevate the resource issues to support the establishment of base funding allocations for the Navajo Nation public water supply supervision program?

Ms. STONER. So the cuts that we have taken under the sequester are across-the-board cuts designated for particular programs, so we have very limited discretion to protect particular programs.

We do continue to work closely with the tribes on those programs, and including with the Navajo, and have put particular attention on ensuring that the drinking water systems and the com-

pliance is as good on tribal lands as on other lands. And we actually have a measure to measure how well we are doing on that. So it is a priority for the Agency.

Mrs. KIRKPATRICK. Do you see another source of funds to continue that project?

Ms. STONER. I think that if we continue to have continued funding under the PWSS program, there is a specific amount of that that goes to the tribes. So the more funding in that program generally, the more funding we will have available for tribes.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman. I yield back.

Mr. GIBBS. Mr. Hanna?

Mr. HANNA. Thank you.

Ms. Stoner, do you believe the EPA jurisdictional authority to regulate water is limited or unlimited—and this isn't meant to be an accusation or any inference whatsoever—limited or unlimited under the Clean Water Act?

Ms. STONER. It is limited. And it is actually more limited than it used to be under the two Supreme Court decisions addressing the scope of Clean Water Act jurisdiction.

Mr. HANNA. To that end, Congress has expressly opposed legislative attempts to remove the word "navigable" from the law and replace it with a new term, "waters of the United States," as broadly defined by the EPA.

Isn't this exactly what the EPA's so-called guidance attempts to accomplish?

Ms. STONER. The guidance that was put out in proposal and as a draft is currently pending, would seek greater clarity about the question that you ask. So it is currently somewhat muddled as to where the scope of jurisdiction lies and where the line lies that you ask about——

Mr. HANNA. What is your opinion about what you would like to see in the language? What would you like to see, ultimately, that language to be?

Ms. STONER. We would like to see greater clarity that helps the Federal, State, local agencies and local entities——

Mr. HANNA. What does that mean to you, though? Which way would you go, "navigable" or "waters of the United States"?

Ms. STONER. Well, both are currently in the Clean Water Act, but what we would like to do is to interpret the language of the Clean Water Act in light of those Supreme Court cases to provide greater clarity on that question.

Mr. HANNA. I understand that numerous stakeholders, including the U.S. Conference of Mayors, National Association of Counties, League of Cities, National Association of Clean Water Agencies, are strongly urging the EPA to update its affordability guidelines to better reflect the financial needs that communities are facing in trying to meet multiple unfunded regulatory mandates.

What are the EPA's plans to amend the affordability guidelines, if any? And why does the EPA, if it is, why does it seem to be so resistant to these changes?

Ms. STONER. We are actually in very productive discussions with the National League of Cities, Conference of Mayors, and the National Association of Counties, on issues of financial capability. I would not say we are resistant at all. In fact, what we are doing

is working out a range of factors that can be considered on financial capability to address those concerns. And it is a very productive dialogue that——

Mr. HANNA. Can you break that down a little bit more? Can you say what that might look like and what kind of timeline we are looking at?

Ms. STONER. Well, the discussions are occurring now, and I believe—we just had one meeting, and I believe there are two more ahead to discuss this in more detail.

Cynthia Giles, my colleague in the enforcement office, and I already issued a memo explaining the general idea about financial capability and considering a broader range of factors. And what we are working on now is what further detail on that would include.

Mr. HANNA. All right. Well, thank you.

Mr. Stanislaus, since 1995, thousands of brownfields sites have been assessed, and well over 2,000 properties have been made ready for reuse.

Can you talk a little bit about the progress for that reuse and how successful it has been? Not just the cleanup, of course, but there are 2,000 sitting out there. What kind of actions are you taking to dispose of these properties and to facilitate new companies, new use of these properties?

Mr. STANISLAUS. Sure.

And I actually think the program is very successful, but we have lots of challenges. On a yearly basis, we are only able to fund about one-quarter of all requests.

And the tools that we provide are generally in the category of grants for investigating a site to determine how contaminated the site is. We provide cleanup resources, we provide redevelopment resources. And, generally, it is led by local governments.

Mr. HANNA. How many of these sites, can you give me an estimate of how many are actually being used for some other purpose?

Mr. STANISLAUS. Yes, I can give you a comprehensive list, but let me give you an overall summary.

Mr. HANNA. OK.

Mr. STANISLAUS. Roughly, every dollar of U.S. grants leverages about $18 of private and public investment. And the reason for that is, because particularly on the site assessment side, it provides more certainty so the private sector can underwrite these projects.

And, in fact, I got together with a number of local leaders and developers just last week at our semiannual meeting to bring actors together to redevelop——

Mr. HANNA. My time is almost up, but do you think that there is enough certainty? Do you imagine, after working through this, there are ways that the Government can either take on more legal responsibility or relieve the downside potential to companies in order to facilitate their interest in these properties?

Mr. STANISLAUS. Well, I would have to consider more the liability question. What we have done is to provide even further liability clarification.

For example, we recently had a conversation with those who were interested in siting clean energy on contaminated properties. You remember, developers and financiers. And they thought that we needed to provide further liability clarification for lessees.

Under the Brownfields Law that was passed a number of years ago, it provided certainty for owners but not lessees. So we have recently issued further clarification, which can be used in the underwriting process to provide that kind of certainty.

Mr. HANNA. Thank you.

My time has expired, long past. Thank you.

Mr. GIBBS. Representative Hahn?

Ms. HAHN. Thank you, Mr. Chairman, Ranking Member Bishop. I am glad we are having this hearing.

I just wanted to start by going on the record, and I know everybody doesn't have the same experience that I have, but I have really found in the areas that I represent out in Los Angeles that we never really had to choose between protecting our environment and creating jobs.

In fact, what I found was cleaning up the air and cleaning up the water at the Port of Los Angeles actually created jobs. And, with our insistence that the Port of L.A. clean up its act, we actually created a laboratory where we had just numerous small businesses and entrepreneurs who were able to start up businesses that helped to clean up the port and gave them a consistent and reliable reason to create businesses and products and technology that would continue to support that mandate.

So I never had to choose between clean air and good jobs. I think we can do both.

I am going to follow up on my friend and colleague, Mr. Hanna's line of questioning about brownfields. And many of the communities that I represent have significant brownfields, and, you know, they are the recipient of decades of being used as a dumping ground for a lot of the rest of Los Angeles. The city of Carson is one of those, and they are discovering that these brownfields sites represent significant development opportunities on valuable, well-located land. And what they are doing now to clean, remediate this is impressive. It is creating jobs and growth and opportunity.

But, Mr. Stanislaus, in what you just said, that every dollar of EPA brownfields spending leverages nearly $18 in private and public funding, of course I am sitting here troubled by the administration proposing to cut brownfields grants by $9 million. And, by your math, you know, cutting this $9.1 million is really a $173 million cut to brownfields projects that are creating jobs, rejuvenating communities, and figuring out a way to deal with these brownfields.

So when we are so desperately in need of jobs and opportunity that these brownfields remediations have provided, how can the EPA ensure that this proposed cut does not adversely impact the progress of brownfields remediation activities across our country and in my district? And how can we leverage more private funding when we are losing a significant leverage tool in this grant money?

Mr. STANISLAUS. Well, thank you. And, you know, ideally, we would not have that cut. You know, we are in this constrained budget time that we have right now. And so we tried to minimize the cut to the greatest extent we can.

So it will have impact in terms of the total numbers of grants that we can give and reduce the number of communities that we can touch. But despite that, you know, we will try to aggressively,

one, get the money out as quickly as possible, shrinking that time period to get the money out as quickly as possible.

When I have had a series of discussions with local leaders around the country, in these budget-constrained times, the single most important activity they underscored in today's climate is technical assistance, on-the-ground technical assistance, probably even more than grants in a lot of cases.

So we are really ramping up our technical assistance, both our direct technical assistance in terms of staff time, our contractor assistance. We recently awarded an independent technical assistance provider to provide capacity to local governments so they can compete for resources in a way that we cannot.

So those are some of the things we are trying to do. The other things—in fact, last week, when we brought together probably about 28,000 various folks from around the country, you know, we continue to want to provide resources and technical assistance to them to advance their projects. And that is some of the various things that we are trying to do.

And I should also underscore, which I always like to do, the increase of property values.

Ms. HAHN. Uh-huh.

Mr. STANISLAUS. So it is not only the direct leveraging. Our studies show that within a mile of a cleanup of brownfield sites increasing property values from 5.1 percent to 12.8 percent. So it directly relates to increases in local tax revenue, you know, property values. So there is a lot of stimulative effects of brownfield sites. That is why I am a big champion of that.

Mr. GIBBS. Mr. Crawford?

Mr. CRAWFORD. Thank you, Mr. Chairman.

And thank the witnesses for being here today.

Ms. Stoner, I want to focus on EPA's regulations of on-farm fuel storage. It has been a source of constant frustration for farmers in my district and, I suspect, across the country, as well.

The most recent continuing resolution, H.R. 933, included a provision, section 1416, that bars the EPA from enforcing the Spill Prevention Control and Countermeasure Rule that went into effect on May 10th.

If your agency can't legally enforce these rules at this time, then why does the EPA's SPCC Web site still direct farmers to be in compliance by May 10th?

Mr. STANISLAUS. So——

Ms. STONER. I am going to direct that question to my colleague.

Mr. STANISLAUS. That is actually my question.

Mr. CRAWFORD. My apologies.

Mr. STANISLAUS. Sure.

So, you know, we have done extensive outreach with the farmers, going back probably, I would say, 10 years or so, to put in place the proper balance of the protections to prevent oil spills. And I think we, I think the farmers, the farm bureaus, we all agree that preventing oil spills is a good thing and limits, prevents impacts on farmland, it prevents impacts on local community water sources.

So, given that, we have tried to make it as lean as possible. And just to be clear, the SPCC rules only cover farms that have a significant size of oil tank. So, of the total farm universe, it is less

than 10 percent. And, of that 10 percent, 95 percent is basically self-implementing. So basically they put together their own plans, they have a file so that they can ensure that oil spills do not happen.

And so, we believe we have done a lot to really accommodate the farmers and the farmers' compliance. And, actually, we have had a great exchange with the farming community in terms of the rules themselves.

Mr. CRAWFORD. OK. Well, with all due respect, you haven't answered my question. What I want to find out is, why are you directing them to be in compliance when you don't have the authority to enforce the compliance based on the section 1416 of H.R. 933, which extended that beyond May 10th? So I am just wondering why you would direct them on your Web site to be in compliance on May 10th.

I guess my followup question would be, when the CR expires, is the EPA retroactively going to enforce those regulations if farmers weren't in compliance by May 10th?

Mr. STANISLAUS. Well, again, our primary objective is to work with farmers to put in the protections necessary. So that is what we will continue to do. And we continue to have exchanges with the farming community to do that. And I think it is a win-win for us to be doing that.

Mr. CRAWFORD. OK. So you will not, then, enforce retroactively for those farmers that are not currently in compliance?

Mr. STANISLAUS. Well, let me get back to you in terms of that.

You know, again, our primary role here is not lead with enforcement; our primary role is to lead with compliance. And that is why we have done lots of outreach with the farming community, going back multiple of years. We have actually developed informational materials with the farm bureaus to distribute to the farmers. We have really worked on making sure during the nongrowing season that we do a lot of outreach to them. So I think we are really working hard to work with the farming community.

Mr. CRAWFORD. Well, I appreciate that, but you just said you lead with compliance, and a key component to compliance is enforcement. My concern is that farmers won't be retroactively penalized based on a compliance date that was superceded by the current CR that is in effect right now.

So I am concerned about that. And I just want to restate for the subcommittee here, I hope that we do something about this very soon because there are a whole lot of small farmers out there, and the thresholds that you have prescribed under the Clean Water Act really are unreasonable, 1,320 gallons. And hopefully we can address that.

I want to switch gears real quick, as my time is limited here.

Along with Chairman Gibbs, I also sent a letter on March 12th requesting some information regarding the EPA release of sensitive information to environmental groups. Have not yet received a response to that letter. So I am also very frustrated with that, as well.

But can you tell me and tell the committee what the process used by the EPA was to acquire released information from State agencies?

Ms. STONER. So we contacted States directly and asked them for publicly available information to help us implement the Clean Water Act's requirements——

Mr. CRAWFORD. OK, let me ask you this: Do you know, was there any information such as a Social Security number possibly, GPS coordinates, and so on that would identify the exact locations of any of these production facilities?

Ms. STONER. I am not aware of seeing any Social Security numbers. There were some addresses that were part of the information. And, as you know, we have taken steps to redact the information, where there were privacy concerns having to do with individuals, and have taken that step and have asked for the other data back, which we have received.

Mr. CRAWFORD. Well, thank you. I am out of time. But, unfortunately, redacting after the fact does little to protect those farmers in question.

I yield back.

Mr. GIBBS. Mr. Mullin?

Mr. MULLIN. Real quick, I want to reiterate what Mr. Crawford was saying. As an active farm operator, it is absurd to me that the EPA is going to start coming on our land trying to tell us how to take care of stuff we have been doing for years. I can assure you, you are not going to find anybody that has more pride in their property than someone like myself that has been on the same land for four generations. We don't need the EPA to come in and start telling us how to take care of something we have been doing for years. That is not my question. That is just me venting.

Now, my question is, though, the EPA Scientific Advisory Board recently announced their independent panel of 31 experts to study the EPA's conduct on—or conducting on hydraulic fracturing. And how did these experts get chosen?

Ms. STONER. I believe you are asking about a question of the study being done by the Office of Research and Development. So that is not a study that we are doing out of my office, but we would be happy to provide that information to you.

Mr. MULLIN. So you guys don't know how the panel was put together?

Mr. STANISLAUS. It was set up, as Nancy noted, by another office. We can get you that information, how the experts were selected.

Mr. MULLIN. Well, I mean, I think that would be pretty important, just for the simple fact—and I just want to point out something here. The panel, 60 percent of those, of the 31 that are on that panel, 60 percent of them had direct funding from the EPA, 60 percent of them. Now, out of that, Missouri is on there, Washington is on there, North Carolina has three universities on there, Penn State has two, Colorado has four. Oklahoma, who has, as we speak, 149 active fracking sites. We gave out 10,000 permits last year alone, not on there. North Dakota, where we are hearing all this stuff going on, not one person is on there.

Something needs to be checked in on this panel. I really hope this doesn't have to do with an agenda. I would really hope that this panel was put together for the purpose of truly giving an independent study point of view. But everything we are seeing, that is not going on. What we are seeing is the EPA once again has their

own agenda, has nothing do with getting it right. It has their own agenda.

And so I would appreciate it if you guys could bring that to my office or at least get it sent to me.

Mr. Speaker, I yield back. Thank you.

Mr. GIBBS. Mr. Davis?

Mr. DAVIS. Thank you, Mr. Chairman.

First off, thank you both for coming in today.

You know, if you are a farmer or a producer and you look at the news for the last few years, you are kind of concerned with your agency. You had proposals to further regulate farm dust, proposals to treat milk spills like oil spills. I know there has been a lot of discussion about the "navigable" term out of "navigable waterways." And, also, your agency admits to releasing personal information on over 80,000 livestock producers to activist groups.

As you can see the hits, they keep on coming to the agricultural community. And I must ask, are you personally aware of the disconnect between the agency you work for and the people that I represent in the agricultural community?

Ms. Stoner?

Ms. STONER. So we have set up a group to supplement the usual group that we have to periodically discuss issues with the agricultural community to try to improve the communication and understanding on issues like the ones that you raise.

We are well aware of the benefits to clean water from having land in farming, particularly, as opposed to developed. And we also recognize what good stewards of the land farmers are in the United States.

So we are actively working with those groups to improve communication on issues on which we have had some difficulties. And I will acknowledge that we have had some, and we are doing the very best we can to improve that situation.

Mr. DAVIS. Ms. Stoner, thank you.

I had an idea, and I successfully included an amendment to the farm bill that would provide agriculture with a place at the table whenever EPA is proposing a new regulation that deals with ag. My amendment does three simple things. It increases the USDA review of the EPA regs that just affect the agriculture industry. It sets up a mechanism where farmers can just provide you input on these regulations. And then it summons an ag review panel that submits a report and recommendations to EPA on the concerns of the ag community.

Given the principles that I have outlined, does the EPA support this type of involvement by the agricultural community and the USDA?

Ms. STONER. I am not familiar with the details of your specific legislation, and I don't believe the administration has a position on it right now.

I will note, though, that every person in the United States has the opportunity to comment on proposed rules and that there also is a process under which USDA and other agencies work through the clearance process that we go through with OMB on every rule, so that those opportunities exist now under current law.

Mr. DAVIS. OK. Well, I mean, you are saying that the farmers and the agriculture industry is already involved in the regulatory process. I just can't fathom, then, how the EPA explains some of the issues that have come out of your agency that I mentioned earlier. I just think there is a disconnect, and I think it demonstrates a lack of understanding that I was just discussing.

I think the EPA needs to provide better access to the agricultural community so that we are not—we are dealing with issues so that your agency understands the ag sector on the front end, rather than having to fight back those proposed rules and regulations on the back end.

I urge you to take my message back to your agency. And if there is any way I can help facilitate that and facilitate that type of message with the EPA and with the USDA, I am more than willing to do that so that we don't have hearings like this or future hearings to discuss what I consider adversarial rules and regulations to the many constituents that I represent in central and southwestern Illinois.

But, again, I do want to thank both of you for your time today. I know it is long and arduous to sit in one of these hearings. I commend you for doing so. And I want to say thank you again on behalf of this subcommittee.

And, Mr. Chairman, thank you for your leadership on this issue. And I would like to yield back my time.

Ms. STONER. Thank you.

Mr. GIBBS. I will start giving myself some time here for questions.

Ms. Stoner, back on spending and spending priorities, it has come to my attention there is a $12 million request to design a new federally owned facility in Las Vegas. And I guess I want to know about that.

Is this going to be—in a time when we have budget restraints and there are more pressing needs than to build new facilities, I hope this isn't a start of a new construction program. So can you address a little bit what the priorities are? And are you getting into the building business?

Ms. STONER. My understanding is that what you are referring to is a lab that is not part of the Office of Water budget, so I am not familiar with the request that you are asking about.

Mr. GIBBS. OK. Because I believe it is going to be referred to as the Harry Reid building, if that stimulates any——

Mr. STANISLAUS. Yes. We will get back to you. I am not familiar with it either.

Mr. GIBBS. OK. OK.

I wanted to talk a little bit about how the past subcommittee hearings in the last Congress, we had some good discussion, I think, on the integrated permitting initiative.

Ms. STONER. Uh-huh.

Mr. GIBBS. And since then, we have had some other hearings, some of the local stakeholders in, and concern that it is not really functioning. I am not so sure that your agency has really been aggressive enough to get that program going, help the municipalities, and craft an acceptable integrated plan.

What is the status? Are you looking at maybe doing 15 or 20 pilot projects? Because this is an area where I think we can really help on the cost side and actually get something done to improve the environment.

Ms. STONER. Yeah, we appreciate your support for that program, and it is moving forward. The goal of it is to work with communities to prioritize their investments so that they can achieve as much as possible with the dollar, given the difficult fiscal times in which we find ourselves.

And that program is moving forward. There is a lot of interest in it across the country. We have not had to turn away anyone yet, so we are not actually in the pilot project mode, in the sense that we are talking to everyone who is interested in it. It is voluntary for them to decide whether they would like to participate in integrated planning. And those who do are working with their State and with EPA to move forward to do so.

We are also making sure it is implemented consistently throughout the country through regular calls with the regions as well as quarterly meetings between Cynthia Giles and the enforcement office and myself to go through the docket of where these discussions are occurring to make sure they are moving forward smoothly.

Mr. GIBBS. Just a suggestion, since we were just talking about the $12 million construction project in Las Vegas, maybe that might be well better spent on pilot projects for this integrated permitting.

A question on that. Is your agency putting out to the local authorities what you would like to see, what kind of projects? Are you trying to stimulate the thought process to try to stimulate the interest? I know there is interest at the local level, but maybe they need some parameters or some guidance.

Ms. STONER. Right. So we actually did put out a document that helps communities identify what elements of an integrated plan would like look. And we have urged them to come in early to talk with both us and the State permitting authority to figure out how to do that together constructively, to develop an integrated plan that can move through the system. So that is how we are addressing that.

Mr. GIBBS. OK.

We have also heard that there are some EPA regional offices where certain cities with the combined sewer overflows promised to keep on spending in the limit where they can afford to solve the combined sewer overflow problems, even if spending more money will not result in meaningful water quality improvements and substantially less costly controls are available that will meet water quality standards.

I thought the EPA Deputy Administrator and you both have said that the EPA would not make cities spend the limits of their affordability without getting meaningful water quality benefits. My question is, what is your policy in spending to the limit of affordability? And why aren't all the regions listening to the DC office?

Ms. STONER. There is no required spending amount, but it is often expensive to address combined sewer overflows. And so part of what we are trying to do is to make sure we are identifying the most cost-effective approaches and working on those with commu-

nities to make sure every dollar is well-spent and achieves improved water quality.

Mr. GIBBS. Do you have affordability guidelines that you work with with local municipalities?

Ms. STONER. Right, so we are currently working—in addition to integrated planning, we are working with local governments on identifying a broader array of factors to be considered on financial capability, as well, to ensure that there is a good understanding on that. But there has never been a minimum spending amount.

Mr. GIBBS. My understanding is that you have guidelines and you are trying to revise them. Are you working through a revision of those guidelines for affordability?

Ms. STONER. We are working to do something on financial capability similar to what we did on integrated planning. And so that would be some kind of a framework or strategy document that we would work on with the Conference of Majors, National League of Cities, and National Association of Counties.

Mr. GIBBS. I hope it progresses quicker because I think we had this discussion 2 years ago, and it doesn't seem like we have moved far and fast enough. So maybe we ought to try to prioritize that. Because I think that would really help municipalities meet their clean water standards and do it in a way they can afford to do it.

Ms. STONER. Again, thank you for your support.

Mr. GIBBS. Mr. Bishop?

Mr. BISHOP. Thank you, Mr. Chairman.

Very briefly, I share the concern that Congresswoman Capito has with respect to the length of time that it takes for permits to be reviewed and granted, and I indicated that in my opening statement.

My question is, I am assuming that if there is an 18-percent cut across the board to EPA that that means some people who currently work for the EPA will lose their jobs. Is that correct?

Ms. STONER. I can't tell you specifically how we would take such a cut, but it would certainly impair our ability to do our job, including working with States on permitting——

Mr. BISHOP. And so, if there were fewer people available to review permits, it is reasonable to assume that an already-lengthy permitting process would become even more so; is that correct?

Ms. STONER. I think that is fair to assume.

Mr. BISHOP. OK. Thank you. And I thank you very much for the work that you do under pretty adverse circumstances, and I thank you for your testimony today.

I yield back, Mr. Chairman.

Mr. GIBBS. OK. I think I have just a couple more questions.

On stormwater, the EPA has initiated a controversial national rulemaking to establish a potentially far-reaching and costly program to regulate stormwater discharges.

What is the status of rulemaking? And when can we expect to see a proposal? And how long will the public comment period be?

Ms. STONER. So I don't have answers to all of the details that you are asking me about. We are working on a stormwater rule which we actually think will, again, address these cost-effectiveness issues that we have been talking about in terms of the problems

associated with water pollution that cities face, many of which have to do with population growth and urbanization and so forth.

So this is part of the approach that we are taking to help to bring down those costs. And we are continuing to work on that. And I actually have been doing a series of roundtables across the country to get more input from cities and others on the proposals we are developing now.

Mr. GIBBS. OK.

Also, I know the question came up earlier, but I wanted to follow up a little bit more, because there has been so much concern out in the country, especially in the rural areas with agriculture. What do you believe the EPA's jurisdictional authority to regulate water is? Is it limited or unlimited of the Clean Water Act? Where do you think that authority ends? When you talk about navigable waters, just where do you see the Agency?

Ms. STONER. So that is exactly why we would like to put out a clarification, because that question is one that comes up often across the country by individuals who are trying to determine whether they need permits or not. So many of them are concerned that the jurisdiction is unclear, that they just assume there is jurisdiction and move ahead with the permitting process.

So we think it would be better to clarify the scope of the Clean Water Act and the limitations that do exist. And there are limitations. And so we would like to get that clarified.

Mr. GIBBS. Would you agree that in, I guess it was 1972, when the Clean Water Act was enacted into law—it has always been my understanding, it was enacted into law under the constitutional authority of the interstate Commerce Clause because the word "navigable" was in there. Would you agree that "navigable" is a key word to the constitutionality of the Clean Water Act?

Ms. STONER. What I would say is that there was a broader scope of jurisdiction under the Clean Water Act earlier than there is now. And some of that was based on the Commerce Clause and the use of waters by migratory birds. And the Supreme Court has indicated that use by migratory birds is not sufficient. There is a narrower scope of jurisdiction under the Clean Water Act that——

Mr. GIBBS. That would be your opinion, right? That you think there is—because I would——

Ms. STONER. I think it is pretty well-recognized, but, yes, it is my opinion that the Supreme Court narrowed the scope of jurisdiction that was previously recognized across the country under the Clean Water Act.

Mr. GIBBS. Interesting.

I just want to also ask, we talk about the nutrients in the numerical versus narrative standard. Can you tell me where the EPA is on setting criteria? Are you moving more toward the numeric in some areas? Are we still using more of the narrative? Or where are we at?

Ms. STONER. So I appreciate you asking that, particularly in light of your opening remarks about partnerships. So we have indicated that our approach is to work with States on statewide nutrient reduction strategies and on criteria.

So numeric criteria do help States implement programs to help address problems associated with nutrient pollution, like algal

blooms and nitrate contamination of drinking water and so forth. And so what we have been doing is working with those States that are interested in doing numeric nutrient criteria to help them with the science, with technical assistance, to have criteria that work for them in their program.

Mr. GIBBS. Are there some issues with your own science advisory board? I think they have expressed concerns about using the numerical standard.

Ms. STONER. I think that there was a document at one point that they made comments on. That was some period of time ago. I think we have already addressed those comments.

But what we are doing is making sure that we have a sound scientific basis for all the work that we do with our State partners on developing numeric criteria.

Mr. GIBBS. Did I understand you correctly to say that some States are moving forward, mostly using the numeric?

Ms. STONER. Yes. There are some States that are currently developing numeric criteria, and we have approved a number of criteria——

Mr. GIBBS. About how many States would that be?

Ms. STONER. I will have to get back to you on the specific answer on that, Mr. Chairman.

Mr. GIBBS. OK. My understanding, you could have a high nitrogen or phosphorus content in some areas that causes a big problem, obviously, with algae blooms and what else. But there are some instances where you could still have a high phosphorous standard and maybe not have a problem, but it would exceed the numeric standard.

So I don't know, if you move totally to a numeric standard and don't use the narrative, will you take in all that is going on in that watershed or that water body or river, the pH, the water flow, the biology. We just have to be careful we don't get constricted to this one-size-fits-all policy that is going to cause problems. Because there are different things going on all across the country in different water bodies. Is that——

Ms. STONER. You are correct that there is no one national number that applies to everyone. And that is actually true of water quality standards generally. They are set by the States based on the uses of the waters.

But for nutrient pollution, different water bodies naturally have different amount of nutrients in them. And so that is one of the factors to be taken into account. And we do that in developing the science, working with the States to set criteria that are appropriate for them.

Mr. GIBBS. OK.

There is a provision in the Clean Water Act that aims to prevent conflicts of interest with people that get appointed to State water quality boards overseeing the administration of Clean Water Act permits. EPA's long-existing rules have a 10-percent income restriction, which has led to problems over the years in many States being able to get qualified people to serve on such, quote, "citizens boards." Some have attempted to use these provisions, in maybe Florida and Maine, as a weapon to try to disqualify political appointees from environmental agencies.

Section 304 of the Clean Water Act directed U.S. EPA to develop regulations to prevent an individual that receives significant income from a permittee or permit applicant from sitting on a water quality authority that reviews and issues NPDES permits. U.S. EPA has defined "significant" to be income in excess of 10 percent of an individual's annual income. This test applies to immediate family members also.

Please explain the basis of this decision that led to the determination that a 10-percent income threshold was the appropriate way to protect against conflicts?

Ms. STONER. I believe we are working on a revision associated with that.

Mr. GIBBS. OK.

It has comes to the committee's attention that EPA's Office of Water is considering ways in which it might revise the income restriction rule to better reflect the realities and complexities of implementing the NPDES permit program, the reach of which has greatly expanded over the years since passage of the Clean Water Act.

Can you explain how the Agency envisions developing alternatives that would ensure that qualified individuals can be appointed to water quality authorities using true conflict-of-interest tests?

And that probably is in your vision, I am assume you are going to tell me.

Ms. STONER. Yeah. Those are the issues that we are looking at in the revision, yes, sir.

Mr. GIBBS. What about timing? You are working on the revision. Do you have a timetable?

Ms. STONER. Not one that I can share with you now, but we would be happy to get back to you on that.

Mr. GIBBS. OK.

I do have another issue here that I guess I might as well bring up, since nobody else is going to ask a question.

Apparently, there is, in Region 9, in the San Diego area, a continue to push permit users in California to impose a numeric influence standard for bacteria in permits based on EPA's November 2010 memorandum that is still not approved and finalized through the OMB review process.

In light of the recent Eighth Circuit opinion in the Iowa League of Cities case finding the practice to violate Administrative Procedures Act requirements, does the EPA intend to withdraw the November 2010 memorandum?

Ms. STONER. So the water-quality-based effluent limits that are in MS4 permits are not reliant on that memo. They are actually reliant on the regulations and the findings that States make that waters are impaired and that they are impaired by stormwater.

So the memo is not actually critical to that decisionmaking, which is an authority that the Ninth Circuit has found that the Agency has under the stormwater program to implement water-quality-based effluent limits to protect water quality. And that is what is being addressed in those permits that you are asking about.

Mr. GIBBS. OK.

Well, I guess we will conclude, and I appreciate——

Mr. DAVIS. Mr. Chairman?

Mr. GIBBS. Oh, yes? Go ahead. Yes.

Mr. DAVIS. Thank you, thank you. And I apologize, but I am glad the chairman brought up the NPDES permit process.

A few years ago in my previous job, I was working with many stakeholders in rural areas who were concerned about the EPA regional office that covers Illinois, their attempt to work with the Illinois EPA to regulate and require testing of above-ground septic system discharge systems, commonly known as aeration systems.

Is there a national push by your agency to require an NPDES permit for individual systems, above-ground discharge systems?

Ms. STONER. No.

Mr. DAVIS. OK. OK. So that was a regional push and——

Ms. STONER. Septic systems are problems in some areas. They are covered by the Nonpoint Source Program. And when they are problematic, we work with States to use the 319 funds that we can provide or other State authorities. And States may have different authorities than we do to address septic system pollution.

It can be a big problem in some areas, and so we do like to work to address that. Sometimes it can be addressed by something as simple as helping people clean out their septic systems. So if you have one, you should make sure you clean it out periodically. But they can cause some bacterial kinds of contamination and nutrient pollution of waterways nearby.

Mr. DAVIS. Well, thank you. And I do have one, and I do clean it out periodically.

There was a big concern, though, that the State and the regional office were going to require in Illinois testing of discharge on each and every above-ground septic system, aeration system, throughout the State, which would inordinately hurt some of the most rural and poorest areas of the State of Illinois. I know that that push was a few years ago. I am glad to hear that there is not a national push from the EPA to do that.

And I would encourage your agency to work with those regional offices in the States to understand the impact that a proposed rule like this might have. And the fact, in Illinois, where I live, we didn't have the testing facilities that would be able to take the tests and figure out whether or not someone passed. There were no further rules about how many tests is it going to take to actually prove, if you failed, if you are now up to your standards.

It was an issue that was big a couple of years ago. It is one that I hope doesn't become a major issue again. And I hope all of the septic system owners like myself do clean their systems out and do take advantage of the technology that is out there, because it is not a permit that should be needed on an individual basis in rural States like mine.

So thank you for clarifying that. Thank you again for your time today.

And I yield back, Mr. Chairman.

Mr. GIBBS. Thank you.

I just wanted to close by just kind of a statement that I think today we learned that—I am happy to see you recognize that agriculture can play a key role in enhancing water quality. I am a firm

believer of that, especially with a lot of the new technologies that are being used, with no-till and min-tillage practices and grass waterways and all that.

I am concerned, obviously, we had the issue about public disclosure of private information. Hopefully that stays at the top your radar screen and is addressed appropriately.

And, also, we are working—we have challenges out there in infrastructure. And I get a lot of people coming into local municipalities; they are all under, most of them, some EPA edict, combined sewer overflow or overcapacity in the sewage treatment plant. And that is why I think the integrated permit process, which I know you support, I think would be a key initiative to help them. Because there is not just enough money to go around. And, hopefully, we can do some things here legislatively. One thing I have been working on is a private-public partnership to bring some resources in, especially in that area, that I think could make a lot of sense for both the private and public sectors. So, encouraged by that.

But I think it is also worth mentioning that—I am sure my ranking member gets it, too, a lot of his constituents and local businesses are concerned about how sometimes the EPA operates. I think everybody wants clean air and clean water. And I think it is important that as much as we can do to help them come into compliance and do the right thing, instead of go out and beat them over the head. Sometimes that doesn't always work as well either. So I think that is always important, as we work as public servants.

So I want to thank you for both being here.

And we will conclude this hearing. Adjourned.

[Whereupon, at 3:55 p.m., the subcommittee was adjourned.]

TESTIMONY OF NANCY K. STONER
ACTING ASSISTANT ADMINISTRATOR
OFFICE OF WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

May 22, 2013

Good afternoon, Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee. I am Nancy Stoner, Acting Assistant Administrator for the Office of Water at the U.S. Environmental Protection Agency (EPA). Thank you for the opportunity to speak about the President's Fiscal Year 2014 budget request for the EPA's National Water Program. The President's budget request demonstrates the EPA's commitment to working in collaboration with the states, territories, and tribal governments to protect and maintain the quality of the Nation's waters. The EPA's request for the National Water Program reflects the EPA's ongoing efforts to carefully consider potential savings.

In these difficult economic times with declining budgets, the EPA carefully reviewed its programs to identify cost efficiencies and savings while still funding the nation's most pressing environmental priorities. The agency has made decisions that allow the EPA to focus on sustaining state and tribal partnerships and maintaining the commitment to our core mission. The requested level of $3.3 billion still allows the National Water Program to continue to support communities, improve infrastructure, drive innovation, spur technology, and increase sustainability. We are doing all of this with an overriding emphasis on strengthening partnerships and providing information and tools for states, tribes and local governments.

The Importance of Clean Water

Clean water is essential for public health, to the nation's economic well-being, to our drinking water supplies, and to the welfare of our families and communities, whether in large cities, small towns, or rural America. The range of local and large-scale businesses that we depend on—and who, in turn, depend on a reliable supply of clean water—include tourism, farming, fishing, beverage production, manufacturing, transportation, and energy generation.

Consider these facts about the value of clean water to the U.S. economy:

- Manufacturing companies use nine trillion gallons of fresh water every year.
- 31 percent of all water withdrawals in the U.S. are for irrigation, highlighting the extent to which the nation's farmers depend on clean water.
- About 40 million anglers spend $45 billion annually to fish in U.S. waters.
- The beverage industry uses more than 12 billion gallons of water annually to produce products valued at $58 billion.

One of the EPA's highest priorities, and one we focus on every day, is supporting communities in meeting their clean water and drinking water goals. A particular focus of ours is helping communities to manage their water infrastructure in an effective, affordable and beneficial manner. The President's budget seeks to ensure that federal dollars provided through the Clean Water and Drinking Water State Revolving Funds (SRFs) act as a catalyst for efficient system-wide planning; improvements in technical, financial, and managerial capacity; and well-designed, well-managed, and sustainable water infrastructure.

This budget will allow the agency to continue its efforts to build, maintain, and strengthen effective partnerships with states, other federal agencies, communities, and other stakeholders to continue to improve the country's water quality. For example, in FY 2014, the EPA will continue its partnership with the U.S. Department of Agriculture (USDA) to ensure that federal resources – including both Section 319 Clean Water Act grants and Farm Bill funds – are managed in a coordinated manner, where feasible, to protect water quality in agricultural watersheds. This coordination will support more effective, targeted investments to ensure continued improvements in water quality during a time of constrained budgets.

Water and Wastewater Infrastructure Investments

The Clean Water and Drinking Water SRFs provide funding to states to improve wastewater and drinking water infrastructure at the municipal level, to address various sources of water pollution, and to improve protection of our waterways. The Clean Water SRF provides financing at below-market interest rates, which allows thousands of communities and other eligible entities to upgrade and replace their wastewater treatment plants, correct combined and sanitary sewer overflows, and prevent pollution from entering waterways at a much lower cost than they would have incurred through conventional financing. The Drinking Water SRF helps to finance the costs of infrastructure improvements needed to achieve or maintain compliance with the Safe Drinking Water Act (SDWA) and to protect public health. Our nation's water utilities face significant infrastructure challenges, and SRF investments help states and communities fund needed improvements to communities' aging infrastructure.

The President's FY 2014 budget request includes $1.095 billion for the Clean Water SRF and $817 million for the Drinking Water SRF. This funding will enable states and tribes to begin approximately 450 clean water and approximately 370 drinking water projects nationally. The EPA will also work with states to target assistance to small and underserved communities with limited ability to repay loans, while maintaining state program integrity. This request, when combined with enacted appropriations, including the American Recovery and Reinvestment Act, totals approximately $20 billion invested by the Federal government in the SRFs over the last six years.

A priority of the EPA this fiscal year will be helping the states of New York and New Jersey to recover from the significant damage done to drinking water and wastewater systems as a result of Hurricane Sandy. With the enactment of HR 152, the Disaster Relief Appropriations Act of 2013 (Public Law 113-2), the EPA will work with New Jersey and New York to make improvements to wastewater and drinking water treatment facilities impacted by Hurricane Sandy, that will make these systems more resilient to limit damage from future natural disasters.

The EPA is also working with municipalities across the country to expand and institutionalize the use of integrated planning that considers a full range of infrastructure alternatives, including "green" infrastructure, so that priority investments are made first, and at the lowest life cycle cost. The EPA continues to implement its 2010 Sustainable Water Infrastructure Policy[1] , which places significant emphasis on encouraging utility planning resulting in infrastructure investments that also support other relevant community goals. The Policy encourages a robust analysis of various infrastructure options, including use of green infrastructure techniques, and encourages utilities to implement management strategies and rate structures that support a system's water infrastructure investments and operations and maintenance.

[1] http://water.epa.gov/infrastructure/sustain/upload/Sustainability-Policy.pdf

Strengthening State Partnerships

Despite the fiscal challenges we face, supporting our state and tribal partners, the primary implementers of environmental programs, remains a priority of the EPA. Funding for states and tribes through the State and Tribal Assistance Grants (STAG) account is once again the largest percentage of the EPA's budget request – at nearly 40 percent in FY 2014. Agency-wide, the FY 2014 request includes a total of $1.14 billion in categorical grants. Total National Water Program categorical grant funding for the FY 2014 budget request is $558.9 million, an increase from the FY 2012 enacted level of $544 million.

The FY 2014 request includes $258.7 million for Water Pollution Control Grants to states, tribes and interstate agencies, an increase of $20 million over FY 2012 levels. In FY 2014, the EPA will designate $15 million of this increase for states that commit to strengthening their nutrient management efforts consistent with my March 2011 memorandum, which lays out a recommended framework for how the agency can work in partnership with states and tribes to achieve near-term reductions in nutrient loadings.[2] Nitrogen and phosphorus pollution is one of the nation's most widespread, costly and challenging environmental problems. Nutrients impact many of our nation's streams, rivers, lakes, bays and coastal waters, causing serious environmental and human health issues, and harming the economy. Some 16,000 waterways are impaired by nitrogen and phosphorus, and 78 percent of assessed coastal waters suffer from nutrient pollution. These additional funds along with state activities funded by nonpoint source grants (Clean Water Act Section 319) and the Clean Water State Revolving Fund, will help ensure that state programs are effective at protecting the environment and supporting our economy.

[2] Nancy K. Stoner memorandum, *Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions*, March 16, 2011.

Supporting Regional Restoration and Community Programs

The President's budget requests $73 million for the Chesapeake Bay Program. The EPA continues to collaborate closely with other federal agencies to restore the health of the Chesapeake Bay and implement the President's Executive Order on protection and restoration of the Chesapeake Bay. The EPA also continues to support the ongoing partnership among federal agencies, Chesapeake Bay jurisdictions, and other stakeholders, which is essential for ensuring that the diverse activities necessary to restore the Bay are being implemented and supported in a strategic manner.

The President's proposed FY 2014 budget provides state and local governments within the Bay watershed with an additional $14.3 million in grants to make further progress on implementing Phase II Watershed Implementation Plans that Bay states and the District of Columbia developed to meet the Chesapeake Bay Total Maximum Daily Load (TMDL). The TMDL defines the reductions in nutrients and sediment needed to alleviate the harmful nutrient and sediment levels that rob the Bay of the oxygen and sunlight needed to support blue crabs, rockfish, other fish and wildlife, and important plant life critical to the Bay ecosystem, and to support clean water in all communities in the Chesapeake Bay watershed. The EPA will continue to work with the seven Bay watershed jurisdictions, as well as local governments throughout the watershed, in identifying cost-effective solutions for meeting the TMDL's goals.

The request includes $300 million to continue funding for the Great Lakes Restoration Initiative (GLRI). The GLRI promotes unparalleled interagency coordination across 16 federal agencies to reduce levels of toxic pollutants in the Lakes, restore habitat, combat invasive species, and improve the health of the Lakes. Approximately half of the $ 300 million will be given to other federal agencies to support their restoration activities. Special priority will be placed on cleaning up and de-

listing Areas of Concern,[3] preventing the introduction of new invasive species, and reducing nutrient pollution that contributes to harmful algal blooms and other water quality impairments.

The President's budget requests $4.4 million to support the Urban Waters Program. The Program focuses on integrating water quality improvements in urban watersheds with community and economic development goals. Through the Urban Waters Program, the EPA will help communities to restore water quality, protect human health, adopt green infrastructure solutions, and provide training and employment opportunities. The majority of the President's $4.4 request for the Urban Waters Program would provide grants directly to local communities for projects that help to achieve these goals. The EPA will continue to actively co-lead the 13 member Urban Waters Federal Partnership along with USDA, the Department of the Interior, and the Department of Housing and Urban Development. The Partnership is working to break down federal program silos and promote more efficient and effective use of federal resources while building new partnerships with state and local governments, local non-profit organizations and the private sector. Through these efforts, the EPA is advancing restoration projects that improve urban water quality and catalyze improvements in local communities and economies.

Conclusion

Thank you, Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee for this opportunity to discuss the President's FY 2014 budget request for the EPA's National Water Program. The President's budget reflects the EPA's ongoing efforts to identify potential savings while continuing our commitment to the core mission of sustaining water quality, public health, and our economy. We look forward to continuing our work with the Subcommittee to ensure clean and safe water for all Americans. Thank you again, and I will be happy to answer any questions you may have.

[3] http://www.epa.gov/glnpo/aoc/

TESTIMONY OF
MATHY STANISLAUS
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

May 22, 2013

Good morning Chairman Gibbs, Ranking Member Bishop, and Members of the Subcommittee. I am Mathy Stanislaus, Assistant Administrator for the U.S. Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER). Thank you for the opportunity to appear today to discuss EPA's proposed budget for OSWER programs falling under the Subcommittee's jurisdiction.

The President's Fiscal Year 2014 Budget demonstrates that we can make critical investments to strengthen the middle class, create jobs, and grow the economy while continuing to cut the deficit in a balanced way. EPA's budget request of $8.153 billion for the 2014 fiscal year starting October 1, 2013 reflects our ongoing efforts to change the way EPA does business; to invest in more efficient ways for the Agency to operate, to further reduce costs wherever possible all while we preserve and enhance our ability to carry out the Agency's core mission to protect human health and the environment. The President's budget reinforces our firm commitment to keeping American communities clean and healthy, while also taking into consideration the difficult fiscal situation and the declining resources of state, local and tribal programs.

EPA's requested budget will allow us to continue making progress toward cleaner air, addressing climate change, protecting the nation's waters, supporting sustainable water infrastructure and protecting

lands and assuring the safety of chemicals. It is the product of careful discussions and difficult choices. In the end, we believe this budget will enable us to work toward the Agency's goals as effectively and efficiently as possible.

To clean up our communities, the President is proposing investments that clean up contamination and promote economic development and job creation. The President's Fiscal Year 2014 Budget proposes $158.5 million for EPA Brownfields and smart growth efforts with $156.3 million proposed for OSWER's Brownfields program to support State and Tribal cleanup programs and to support planning, cleanup, job training, and redevelopment of brownfields properties, especially in underserved and disadvantaged communities. Included within this request are the following categories: (1) $47.6 million in categorical grants awarded directly to the states, tribes, and territories to support their own response programs; (2) $85.0 million for the brownfields projects account supporting competitive grant competitions including; assessment, revolving loan funds, cleanup, area-wide planning, and environmental workforce and job training grants; and (3) $23.7 million in other technical assistance, program operations, and sustainable development through OSWER's Environmental Programs and Management (EPM) account.

EPA's Brownfields program uses its funding to successfully leverage economic investment. On average, nearly $18 is leveraged in private and public funding for every EPA dollar expended, and more than 85,000 jobs have been leveraged through brownfields projects funding since the inception of the Brownfields program. In FY 2014, Brownfields program grantees are projected to assess more than 1,200 properties, clean up more than 120 properties, help create at least 5,000 cleanup and redevelopment jobs, and leverage more than $1.2 billion in cleanup and redevelopment funding. The

assessment and clean up of brownfields properties is essential to community revitalization in economically disadvantaged areas.

The Brownfields program also provides funds for environmental workforce development and job training. In 2012, one of the successful environmental workforce and job training grant applicants was the City of Glens Falls, New York. Glens Falls anticipates training 100 unemployed, local residents and placing 90 graduates in environmental jobs. Graduates will be provided training in Hazardous Waste Operations and Emergency Response (HAZWOPER), confined space entry, construction site worker safety, underground storage tank leak prevention, solid waste management, alternative waste technologies, wastewater treatment facility operation, and lead-based paint renovation, repair, and painting. In addition, training will also be offered to help meet the employment needs of the Hudson River Dredging Superfund project and other environmental cleanup projects planned or underway in the region.

EPA launched its Area Wide Planning program in FY 2010. Brownfields Area-Wide Planning encourages community-based involvement in brownfields reuse planning and neighborhood revitalization. Using a brownfields area-wide planning approach, a community identifies a specific project area that is affected by a single large or multiple brownfield site(s), and then works with residents and other stakeholders to develop reuse plans and identify opportunities for implementation funding for catalyst, high priority brownfield sites and the surrounding areas. By focusing on economically disadvantaged communities suffering from economic disinvestment, brownfields properties can be cleaned up and redeveloped to help meet the needs for jobs, housing, and infrastructure investments that would help rebuild and revitalize these communities as a whole, as well as identify opportunities to leverage additional public and private investment.

Beginning with the pilot program in FY2010, EPA awarded funding for 23 projects in 18 states. While most of these grants with EPA have ended, EPA will continue to support the 23 pilot communities as they seek resources and leverage funds for plan implementation. In April 2013, EPA announced the selection of 20 new Brownfields Area-Wide Planning recipients. These new recipients represent 16 states, including local governments in Burlington, VT; Lee, MA; Philadelphia, PA; Louisville, KY; Toledo, OH; Indianapolis, IN; Freeport, IL; Janesville, Wausau, and Green Bay, WI; Shreveport, LA; Council Bluffs, IA; Minot, ND; and Vancouver, WA; a regional planning commission in Central Florida; as well as nonprofit organizations in Yonkers, NY; Carlisle, PA; Chicago, IL; Chattanooga, TN; and National City, CA. In FY 2014, EPA will work with the 20 new communities recently selected for brownfields area-wide planning awards, and, as part of the Agency's on-going efforts to assist economically disadvantaged communities, plans to award an additional 20 brownfields area-wide planning projects.

EPA will continue to recognize that the nation's wide-ranging small and rural areas can benefit from brownfields funding and technical assistance by emphasizing these areas through our Targeted Brownfields Assessments. EPA will also provide funding for assessment and cleanup of underground storage tanks and other types of petroleum contamination on brownfields sites.

This budget requests $1.18 billion for Superfund cleanup efforts across the country, which represents a reduction from FY 2012 enacted levels and reflects the hard budget choices that are being made. Superfund Removal and Homeland Security program funding levels are maintained with focused reductions associated with long-term remediation in the Superfund Remedial program. We expect that reductions to the Superfund Remedial program will result in only a limited number of new EPA-lead

construction project starts in FY 2014. EPA will balance the Superfund Remedial pipeline while focusing on the completion of ongoing projects rather than new starts.

We will continue to respond to environmental emergencies, clean up the nation's most contaminated hazardous waste sites, and maximize the participation of liable and viable responsible parties in performing and paying for cleanups. We are committed to continuing the Superfund program's success in protecting human health and the environment and providing local communities opportunities for economic development by cleaning up our nation's worst hazardous waste sites.

For example, the Mill Creek Dump Superfund site in Erie, Pennsylvania is an example of how cleanup can lead to beneficial use of a Superfund site. For four decades, the site operated as an industrial and municipal dump, as well as an unpermitted dump area. Cleanup activities addressed soil and ground water contamination at the site, while also addressing wetland habitats lost through landfill operation and remedy construction. The site's responsible parties worked with federal, state and local government partners to develop a cap design that would support future development of a golf course over the capped area and to select areas to construct replacement wetlands.

Several years later, the adjacent property owner, Erie International Airport, acquired 12 acres of the capped area, including portions of the golf course, for a runway expansion project to enhance aviation capacity and comply with Federal Aviation Administration safety regulations. Federal, state and local government partners worked with the responsible parties and the Airport to ensure that construction and reuse would continue to be compatible with the remedy at the site. In November 2012, the new extended runway at Erie International Airport opened to air traffic and a newly reconfigured golf course and driving range will reopen to the public this summer.

Another example of cleanup and beneficial use is the Aerojet General Corp. Superfund site in Rancho Cordova, California. Rocket engine design, manufacturing and chemical formulation activities at the site led to soil and ground water contamination. Cleanup efforts at this 5,900-acre site included pumping and treating 25 million gallons of ground water per day to contain the contaminated plume. Through collaboration with federal and state partners, as well as a significant contribution from the local utility district, Aerojet constructed a 6 megawatt solar farm on the site to reduce the company's carbon footprint and help power the ground water treatment system. The electricity produced provides more than 20 percent of the energy needed to power the site's ground water cleanup program.

Aerojet continues to operate on the Superfund site and also has tenants using the site for a variety of office, commercial and light industrial activities. Aerojet has begun planning for a smart growth, mixed-use development for a portion of the site, including residential and commercial transit-oriented uses.

EPA has initiated a multi-year effort to integrate and leverage our land cleanup authorities to address a greater number of contaminated sites, accelerate cleanups, and put sites back into productive use while protecting human health and the environment. EPA's Integrated Cleanup Initiative (ICI) represents EPA's commitment to bring more accountability, transparency and progress to contaminated site cleanups. As a first step, EPA developed a publicly reported performance measure in FY 2011 which tracks the number of Superfund Remedial Action Project completions. In FY 2012, we exceeded our target of 130 by completing 142 remedial action projects. EPA has committed to 115 project completions in both FY 2013 and FY 2014. This measure has augmented EPA's site-wide construction completion measure and helps improve project management and provide communities with additional and important site progress information.

EPA has completed four site project management pilots as part of our ICI efforts. Lessons learned include methods to expedite settlement negotiations, producing a more effective procurement and management process through project delivery integration, reducing remedial timelines through increased use of agency-based resources, and utilizing pre-placed contracts for remedial design and remedial action work. We are applying the cost and time savings lessons learned through these pilots to other site projects planned and underway in the Superfund program.

One of the principal elements of the ICI is to increase the project management focus and manage projects to completion. In FY 2012, EPA controlled unacceptable human exposures from site contamination at an additional 13 sites, exceeding the goal of 10; controlled groundwater migration from site contamination at an additional 18 sites, exceeding the goal of 15; made ready for site-wide anticipated use an additional 66 sites, exceeding the goal of 65; and completed remedy construction at 22 sites throughout the country, meeting the goal of 22.

Through the end of FY 2012, cleanup construction has been completed at 1,142 NPL sites, which represents 68 percent of sites listed on the NPL. The FY 2014 goal for construction completions is 15 sites. In FY 2014, we will continue to seek ways to conduct our work as efficiently as possible through innovative contracting approaches and working to incorporate project optimization into our cleanup management. Despite these efficiency efforts, EPA anticipates that the budget reductions in our Superfund Remedial program will have an impact on program outputs, affecting a number of aspects of the Remedial cleanup pipeline. The agency will continue to give priority to completing projects at various stages in the response process. The cumulative effect of funding reductions in recent years and sequester will potentially delay construction work at approximately 40 to 45 new construction projects by the end of FY 2014. EPA will strive to continue to maintain a number of key public health measures,

including 10 sites where human exposures are brought under control and 15 sites where groundwater migration is brought under control.

The Superfund program also continues to prepare for future cleanup efforts, and in FY 2012 the Agency listed 24 new sites on the NPL and proposed an additional 18 new sites. EPA has continued its effort to efficiently utilize every dollar and resource available to clean up contaminated sites and to protect human health and the environment. In FY 2012, EPA obligated more than $625 million for Remedial cleanup activities, including funding from the Superfund program appropriation, state cost-share funding, and potentially responsible party settlement funding for Superfund construction and post-construction projects. In FY 2012, EPA completed 142 Remedial Action Projects at sites on the NPL. EPA was also able to utilize some of this obligated funding to fund 12 new starts on construction projects (although EPA was unable to fund 21 new construction project starts).

EPA has been particularly successful in leveraging constrained appropriated funding through the use of responsible party settlements to establish site-specific special accounts. Through the end of FY 2012, EPA had collected more than $4 billion (including interest) in more than 1,000 site-specific special accounts. Of this amount, EPA has disbursed or obligated more than $2.5 billion for site response actions and developed multi-year plans for nearly 100% of the remaining funds in special accounts available to fund response actions. In total, through FY 2012, EPA has secured more than $37 billion in responsible party commitments for site cleanup and reimbursement of past costs. Of this amount, more than $31 billion is from settlements for cleanup and approximately $6 billion is from settlements for cost recovery.

In addition, the Superfund removal and emergency response program conducted, or provided oversight for, 428 EPA-lead and responsible party removal cleanup actions in FY 2012. The FY 2014

target for EPA-lead removal actions is 170, as is the target for responsible party removal actions. EPA's emergency response program will continue to maintain capability to respond to imminent threats to human health, including incidents of national significance. EPA is the lead federal agency under the National Response Framework for Emergency Support Function (ESF) 10, which addresses the response to discharges or uncontrolled releases of oil and hazardous materials.

EPA's chemical accident and oil spill prevention programs play an important role in assessing and reducing risks of chemical accidents and oil spills. EPA's Risk Management program works with State and local prevention and preparedness programs to help protect communities from catastrophic releases of hazardous substances from facilities which are required to submit Risk Management Plans (RMPs) and works with the facilities to identify deficiencies and recommend best practices to help prevent a release. There are approximately 13,000 facilities with Risk Management Plans throughout the United States. The FY 2014 budget requests an additional $800 thousand to increase inspections at high risk RMP facilities.

EPA's oil Spill program is designed to protect inland waterways through oil spill prevention, preparedness, and enforcement activities associated with the more than 600,000 non-transportation related oil storage facilities that EPA regulates. Recognizing the importance that this sector has both to our economy and to our environment, the FY 2014 Budget requests a $2.4 million increase for OSWER's oil spill program which will fund efforts to broaden and expand prevention and preparedness activities, particularly with respect to the inspection of high risk facilities and the development and implementation of a third party audit program. Approximately 20,000 oil spills are reported each year to the federal government. The severity of these spill reports varies, and EPA evaluates as many as 13,000 spills to determine if its assistance is required. EPA works closely with the U.S. Coast Guard and, on

average, either manages the oil spill response or oversees response efforts of private parties at approximately 250 to 300 sites per year. The FY 2014 Budget request for OSWER's oil spill prevention, preparedness, and response program is $17 million with a total agency oil spill appropriation request of $21 million which includes funding for oil spill research and enforcement efforts.

The President's 2014 EPA budget request maintains the commitment to protect human health and the environment, protects our communities while promoting economic development and job creation, and reflects tough choices in recognizing the fiscal constraints facing our nation.

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

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Bob Gibbs
Chairman
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your May 23, 2013, June 14, 2013, and June 21, 2013 letters to the Environmental Protection Agency's (EPA) Acting Assistant Administrator for the Office of Water, Nancy Stoner, and to EPA's Assistant Administrator for the Office of Solid Waste and Emergency Response, Mathy Stanislaus, requesting responses to Questions for the Record following the May 22, 2013, hearing entitled "The President's Fiscal Year 2014 Budget: Administration Priorities for the U.S. Environmental Protection Agency".

The responses to the questions are provided as an enclosure to this letter. If you have any further questions, please contact me or your staff may contact Greg Spraul in my office at [redacted].

Sincerely,

Laura Vaught
Associate Administrator

Enclosure

cc: The Honorable Tim Bishop, Ranking Member
Subcommittee on Water Resources and the Environment

QUESTIONS FOR THE RECORD
SUBCOMMITTEE ON WATER RESOURCES & ENVIRONMENT
HEARING ON "The President's Fiscal Year 2014 Budget: Administration Priorities for the U.S. Environmental Protection Agency"
May 22, 2013

Chairman Bob Gibbs

As you are aware, in 2002, the U.S. Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) adopted a joint regulatory definition of fill material, which clarified the proper legal distinction between discharges regulated under Section 402 of the CWA, and those regulated under Section 404. That clarification has allowed regulated entities to have certainty with respect to which permitting regime their discharges fall under, and was supported by the U.S. Supreme Court in the case of *Coeur Alaska v. Southeast Alaska Conservation Council* (557 U.S. 261 (June 22, 2009)).

However, both EPA and the Corps have, in recent months, indicated that they are currently considering revising the joint regulatory definition of fill material. Yet, at the Subcommittee on Water Resources and Environment hearing on May 22, 2013, you stated that EPA has "no active discussions with the Corps on revising that rule at this time."

Question 1: Are EPA and/or the Corps in any way considering making potential changes to the definition of fill material (even if discussions between the agencies are not "active" "at this time")? Please clarify this apparent inconsistency (of whether EPA and/or the Corps are considering making potential changes to the definition of fill material).

Question 2: If so, have any decisions been made regarding whether or not EPA and/or the Corps will move forward to amend the definition?

Question 3: What is the timing for any potential future rulemaking on the definition of fill material?

Answer (Questions 1-3): The Corps and the EPA have at various times discussed actions for both the waste treatment system exclusion and the definition of "fill material" that could provide additional clarity. However, as I testified during the May 22, 2013, hearing, the EPA has no active discussions with the Corps at this time on revising the agencies' definition of "fill material."

Question 4: EPA staff have alluded that the agencies, around 2009/2010, had developed ideas for revising the definition of fill and considered potential language revisions. What potential language revisions were the agencies considering at the time?

Question 5: What specific issues or problems – either then or now – with the current fill material rule have prompted EPA and/or the Corps to examine changing the definition?

Answer (Questions 4-5): The U.S. Supreme Court addressed the definition of "fill material" in *Coeur Alaska v. Southeast Alaska Conservation Council*, 129 S.Ct. 2459 (2009). The decision focused on the existing regulatory framework established under the Clean Water Act to review discharges of mining waste in waters of the United States. The Court deferred to the EPA's interpretation in its 2004 Mining Memorandum and concluded that because the tailings Coeur Alaska proposed to discharge were appropriately considered "fill material" under the regulations, Coeur Alaska properly obtained its permit from the Corps under CWA Section 404, rather than from the EPA under Section 402. The Court also

noted that the agencies' regulations fail to fully resolve the statutory ambiguity. The EPA and the Corps have at various times discussed options regarding the definition of "fill material" that could provide additional clarity. However, as noted in response to Questions 1-3 above, the EPA has no active discussions with the Corps at this time on revising the agencies' definition of "fill material."

Question 6: What potential language are the agencies considering now to address such issues?

Answer: Please see the response to Questions 1-3 above.

Congressman Duncan Hunter

Q1. EPA Region 9 Water Division officials continue to push NPDES permit issuers in California to impose numeric effluent limits for bacteria in permits, based upon EPA's November 2010 Memorandum that is still not approved and finalized through the OMB review process. In light of the recent 8th Circuit opinion in the Iowa League of Cities case, finding the practice to violate Administrative Procedures Act requirements, does EPA intend to withdraw the November 2010 Memorandum?

Answer: As permitting authorities write permits to comply with the Clean Water Act (CWA), the Act and its implementing regulations provide the controlling legal requirements for their decision-making. The bacteria limits in the recently issued stormwater permit for the San Diego area were consistent with the bacteria Total Maximum Daily Load (TMDL) established by the state of California which is required by federal regulation. Permit issuers must follow the regulations at 40 CFR 122.44(d)(1)(vii)(B), which says that when a state or the EPA has established a TMDL for a pollutant, permits must contain effluent limits and conditions that are consistent with the assumptions and requirements of any available wasteload allocation in the TMDL applicable to the permittee.

As for the November 2010 Memorandum, the EPA has not made a final decision on whether to retain the memorandum without change, to reissue it with revisions, or to withdraw it. The agency is currently reviewing public comments submitted in response to the agency's March 17, 2011, request for public comments on the memorandum.

Q2. If scientific evidence demonstrates to an NPDES permit issuer that numeric effluent limitations imposed in a permit, such as for bacteria, are infeasible to attain, does EPA take the position that the permit issuer should immediately engage in a process to review and resolve the infeasibility issue before taxpayer dollars are spent in attempting to achieve an unachievable standard?

Answer: Under the CWA, NPDES permits must include water quality based permit limits where necessary to meet water quality standards, regardless of the availability or effectiveness of treatment technologies. *See* Westvaco v. EPA, 899 F.2d 1383 (4th Cir. 1990); NRDC v. EPA, 859 F.2d 156 (D.C. Cir. 1988). However, the CWA provides permitting authorities with flexibilities they may use in helping to ensure CWA requirements can be met in a way that achieves water quality results in a sustainable manner. For example, the San Diego MS4 permit, issued by the San Diego Regional Water Quality Control Board, provides an innovative mechanism – known as a Water Quality Improvement Plan – through which permittees can implement permit requirements through watershed-based implementation plans that allow for focusing first on highest priority, cost-effective pollution controls. As they develop and implement these plans, permittees can have substantial flexibility to determine how best to sequence implementation actions, and would have the ability to collect information needed to support potential revisions in permit schedules and requirements. The San Diego Regional Board is most familiar with the specifics of its permit and how these flexibilities were developed and are being applied.

Q3. Why does EPA not require a cost-benefit analyses to be completed prior to a permitting authority issuing significant and costly water quality regulations like bacteria TMDLs?

Answer: States or the EPA *may* consider financial capability and other relevant factors when developing appropriate schedules in NPDES permits and enforcement orders for municipal projects necessary to

meet CWA obligations. The EPA believes that appropriate schedules in a permit or enforcement order can ensure that the financial burden on a permittee is reasonable.

Also, states may consider cost as part of a Use Attainability Analysis (UAA), which they may conduct when the designated use associated with a water quality standard may not be attainable. As part of this analysis, the state must demonstrate that one of the six regulatory factors at 40 CFR § 131.10(g) precludes the attainment of the use, and adopt the use that is attainable. One of these six factors is the extent to which attaining the relevant water quality standard would result in widespread and substantial economic and social impact.

The EPA is aware that during the development of the San Diego Beaches Bacteria TMDL, the San Diego Regional Board completed a cost-benefit analysis to demonstrate that the TMDL can be reasonably implemented. The Regional Board also reviewed a cost-benefit analysis developed for the City of San Diego and took this analysis and other economic factors into account before issuing the San Diego Regional MS4 permit.

Q4. Why has EPA ignored their own January 2013 guidance to work closely with local governments to analyze financial capability? Why did EPA not reach out to southern California communities and require the San Diego Regional Water Quality Control Board to perform a cost-benefit and financial capability review for the San Diego Bacteria TMDL?

Answer: On January 18, 2013, the EPA issued the memorandum "Assessing Financial Capability for Municipal Clean Water Act Requirements." As discussed in the memorandum, the EPA is working closely with local governments to clarify how the financial capability of a community should be considered when developing schedules for municipal projects necessary to meet Clean Water Act (CWA) obligations. While cost-benefit and financial capability reviews are not required for developing TMDLs, a community's financial capability and other relevant factors are important when developing appropriate schedules in permits and enforcement orders for municipal projects necessary to meet Clean Water Act obligations, including TMDL implementation. The EPA believes that appropriate schedules in a permit or enforcement order can ensure that the financial burden on a permittee is not too high. The agency continues to work closely with municipalities to clarify how the financial capability of a community will be considered when developing schedules for municipal projects necessary to meet CWA obligations. It is essential that long-term approaches to meeting CWA objectives are sustainable and within a community's financial capability.

On January 16, 2013, EPA Region 9 met with San Diego County officials to discuss the then-draft San Diego regional stormwater permit. The EPA heard the County's concerns regarding the implementation of the San Diego beaches bacteria TMDL, including concerns regarding costs the County could incur for permit implementation. The agency understands the permit contains a 20-year schedule for the implementation of this TMDL, and that the aforementioned Water Quality Improvement Plan process provides the permittees the framework to suggest schedule revisions. Because the permit to which you refer was issued by the San Diego Regional Water Quality Control Board, the Board is better equipped than the EPA to describe the analyses the Board conducted in support of its permitting action.

Q5. Why are the California Regional Water Boards allowed to insist that Receiving Water Limitation (RWL) language be included in their municipal stormwater permits, when that

language is not mandated by the federal Clean Water Act and is not always used by EPA when it issues stormwater permits directly to states and municipalities?

Answer: Stormwater permits issued by California's Regional Water Quality Control Boards contain provisions that prohibit discharges that cause or contribute to the exceedance of water quality standards in receiving waters. These provisions are protective of public health and the environment, for example, providing protections for people who use the many recreational waters at beaches in southern California. Including such provisions is consistent with section 402(p)(3)(B)(iii) of the Clean Water Act, which states that municipal stormwater permits shall require "such other provisions as the Administrator or the State determines appropriate for the control of such pollutants."

Congressman Don Young

Q1. Recommendations adopted in Executive Order 13547 stated that Coastal and Marine Spatial Planning will require "significant initial investment of both human and financial resources," and in early 2012 the National Ocean Council noted that federal agencies had been asked to provide information about how "existing resources [can] be repurposed for greater efficiency and effectiveness" in furtherance of the National Ocean Policy."

In addition, EPA officials are currently serving on newly-formed Regional Planning Bodies created under the Executive Order in regions including the Northeast and Gulf of Mexico.

Please describe how many EPA resources and personnel have been directed toward activities specifically in support of the National Ocean Policy to date, and how many resources and personnel are being requested to support such activities in the FY 2014 budget request.

Please describe the EPA response to the National Ocean Council inquiry about the repurposing of existing resources, and any actions that EPA has taken or plans to take in this regard.

Answer: National Ocean Council agencies have a number of existing programs and resources committed to ocean-related management activities, missions, and objectives under existing authorizations and legislation. The National Ocean Policy (NOP) is not affecting existing funding commitments or directives; rather, it helps to better focus and leverage existing resources, and allows for more efficient use of taxpayer dollars by improving coordination and collaboration, and identifying clear priorities and associated actions. There is no separate line item for the NOP in EPA's budget.

The NOP directs agencies to use resources more effectively by identifying shared priorities, sharing data, working through potential conflicts, coordinating decision-making, and eliminating duplication. The Implementation Plan integrates and coordinates existing activities and missions under the umbrella of the NOP. It describes specific actions federal agencies will take to address key ocean challenges, gives States and local communities greater input to Federal decisions, streamlines operations, saves taxpayer dollars, and promotes economic growth. The goal is to better leverage resources, coordinate decision-making, and work collaboratively with partners in a way that serves local interests and supports economic development in ocean and coastal communities and industries.

Q2. Section 6(b) of Executive Order 13547 that established the National Ocean Policy in July 2010 requires "[e]ach executive department, agency, and office that is required to take actions under this order shall prepare and make publicly available an annual report including a concise description of actions taken by the agency in the previous calendar year to implement the order, a description of written comments by persons or organizations regarding the agency's compliance with this order, and the agency's response to such comments."

Pursuant to this requirement, has EPA – a member of the National Ocean Council – prepared and made publicly available any such annual report for calendar years 2010, 2011, or 2012? If so, please describe the findings and contents of such reports, and if not, why has this not occurred?

Answer: No report has yet been issued pursuant to Executive Order 13547. The emphasis has been on the development of the Implementation Plan released on April 16, 2013. The Implementation Plan will serve as the benchmark against which all agencies will provide progress updates that will then be incorporated into a single National Ocean Council Annual Report.

Q3. The recommendations adopted by the National Ocean Policy Executive Order state that effective implementation will require "clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component." In addition, the Executive Order requires federal entities including EPA to implement the policy to the fullest extent possible.

At the same time, the National Ocean Council has stated that the National Policy "does not establish any new regulations or restrict any ocean uses or activities."

What if any commitment can you make that EPA will not issue any regulations or take any actions having a regulatory impact pursuant to the National Ocean Policy, including Coastal and Marine Spatial Planning?

Answer: Without creating any new regulations or authorities, the Implementation Plan establishes mechanisms to ensure that all relevant local, national partners, and federal agencies are able to work together to reduce duplication, leverage resources, and use taxpayer dollars more efficiently.

The Implementation Plan will improve coordination and speed federal permitting decisions; facilitate better management of ocean, coastal, and Great Lakes resources; coordinate the development and dissemination of sound scientific information; and establish mechanisms to collaborate effectively with State, Tribal, and local partners, marine industries, and other stakeholders. None of the actions identified for the EPA under the Policy require issuance of new regulations in order to support the implementation of the Policy.

Congressman Rick Crawford

Q. In the hearing you failed to answer an important question regarding the Spill Prevention, Control, and Countermeasure (SPCC) program, and I would like to revisit the issue since you promised an answer at a later time. Despite claims to the contrary, the program continues to cause great uncertainty for producers, as the rule for agriculture has been drafted, re-drafted, withdrawn and extended many times since SPCC's inception. You agreed in the hearing that we are now past the compliance deadline, but the EPA has no legal authority to enforce the rule pursuant to Section 1416 of the Consolidated and Further Continuing Appropriations Act of 2013 (P.L. 113-6). In an effort to clear up the widespread confusion among producers, can you assure the Committee that the EPA will not retroactively initiate enforcement actions against individual producers at the expiration of Section 1416 for producers who had not come into compliance with SPCC rules by May 10, 2013?

Answer: Owners and operators of certain oil-handling facilities, including farms, have been subject to the EPA's SPCC regulation at 40 C.F.R. Part 112 (including the requirement to have an oil spill prevention Plan) since 1974. In 2002, the EPA revised the SPCC regulation and established a compliance date to provide existing facilities time to amend (and for new facilities time to prepare) and implement their Plans to comply with the amended SPCC regulation. The EPA further amended the SPCC regulation in 2006, 2008, 2009 and 2011 to streamline and clarify SPCC requirements. The compliance date for farms has been extended a number of times to provide additional opportunities for those facilities to amend or prepare an SPCC Plan. The EPA has also conducted extensive outreach to the farm community regarding these requirements, including working with the USDA, states, universities, and other entities to assist agricultural producers with their compliance obligations. There is additional assistance, information and resources available through the EPA's "SPCC Ag" website to assist farmers in complying with the SPCC rule, including information to assist farmers that need extensions to meet the compliance dates for a SPCC Plan, at http://www.epa.gov/emergencies/content/spcc/spcc_ag.htm.

Although farmers who meet the program's regulatory thresholds were obligated to prepare or amend and implement their Plans by the May 10, 2013 compliance date (see 40 C.F.R. § 112.3(a)(3)), consistent with the requirements of the 180-day period under the Continuing Resolution (P.L. 113-6), the EPA is not currently using Agency funds to inspect, seek information from, or otherwise investigate the SPCC compliance status of any owner or operator of a farm. Information you have received is incorrect; the EPA has not been informing members of the agricultural community that at the end of the 180-day period the Agency will begin "retroactively" enforcing the requirements of the SPCC regulations as they apply to farms. We continue to provide compliance assistance to the agricultural community so that agriculture producers can meet their SPCC obligations in a timely fashion. Questions have arisen whether the EPA expects to enforce the SPCC Plan requirement for the period between the compliance date of May 10 and the expiration of the 180-day period adopted by Congress. Given the unique factors in this particular set of circumstances, absent a spill, the Agency does not intend to take enforcement action solely for the failure of a farm to have an SPCC Plan in place under 40 C.F.R. 112.3 (a)(3) during the period from May 10 to September 23,2013.

United States Government Accountability Office
Washington, DC 20548

May 6, 2013

The Honorable Tim Bishop
Ranking Member
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Funding for 10 States' Programs Supported by Four Environmental Protection Agency Categorical Grants*

Dear Mr. Bishop:

State environmental agencies use federal grants, in addition to their own funds, to help implement and enforce the nation's environmental laws, including the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act. As the nation slowly recovers from the economic downturn that began in 2007, the importance of federal grants has increased, as some states have reduced their funding for certain environmental programs to address decreased state revenues and significant deficits in funding. The Environmental Council of the States, an association of state environmental agencies, reported that environmental agencies in 24 states had budget reductions from fiscal year 2011 to fiscal year 2012, while the remaining environmental agency budgets in the states the Council reviewed had increased or remained level.

The Environmental Protection Agency (EPA) provides grants, known as categorical grants, to states to assist in implementing various water, air, waste, pesticide, and hazardous substance programs that carry out federal environmental requirements. Annual appropriations for these grants have decreased by approximately $85 million between fiscal year 2004 and fiscal year 2012.[1] Members of Congress and state stakeholders have raised questions about the adequacy

of EPA categorical grant funding in light of recent economic conditions and the effects on state budgets. To better understand the effects of changes in federal funds on state programs supported by EPA categorical grants, this report examines (1) funding patterns from both federal and state sources for state programs supported by selected EPA grants over the last 10 years, and (2) views of state officials on any adjustments made to state programs in response to changes in federal and state funding.

To address the first objective, we chose four categorical grants for which we obtained state data: (1) the Water Pollution Control grant, (2) the Nonpoint Source grant,[2] (3) the State and Local Air Quality Management grant, and (4) the Underground Injection Control grant.[3] We chose the first three grants because, in total, they are the largest categorical grants provided to states. We selected the fourth grant because the funding has remained level over many years. To analyze funding patterns and sources for state programs supported by these four grants, we requested funding data from 10 selected states for each of the state programs supported by the four EPA grants over the last 10 years.[4] We asked for the data by source: federal funds, state General Funds, and fees and other funds. States provided either funding or expenditure data, depending on the type of data collected in their information systems; 2 states provided funding data and 8 states provided expenditure data. For those states that provided expenditure data, we confirmed that the data approximated state funding data.

We selected a nonprobability sample of 10 states—Hawaii, Idaho, Michigan, Mississippi, Nebraska, New Jersey, North Dakota, Oklahoma, Vermont, and West Virginia—on the basis of environmental funding data supplied by the Environmental Council of the States[5] (Council) and

[1]Throughout this report, federal and state data are presented in current dollars unless otherwise noted. Where noted, data have been adjusted to constant 2012 dollars based on the federal fiscal year, which is from October through September, or state fiscal year, which is generally from July through June, where appropriate. Some states have different fiscal years, such as Michigan, which has a fiscal year starting in October and ending in September, and their data have been adjusted accordingly.

[2]Nonpoint source pollution refers to water pollution from diffuse, or nonpoint, sources—such as runoff from farms or construction sites—that runs into water bodies.

[3]State and federal underground injection control programs are responsible for regulating the construction, operation, permitting, and closure of injection wells that place fluids underground for storage or disposal.

[4]Of the 10 states, 6 provided data for 9 years; 1 provided data for 8 years; and 3 provided data for 5 years.

[5]The Environmental Council of the States is a national nonprofit, nonpartisan association of state and territorial environmental agency leaders. The purpose of the Council is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States of America.

EPA regions.[6] Specifically, for each EPA region, we selected the state for which the proportion of federal funds to the state's environmental funds was the highest. To assess the reliability of the Council's environmental funding data, we interviewed Council officials about the data they obtained and reviewed the methodology they used to collect the data; we determined Council data were sufficiently reliable for our purpose of selecting states. To assess the reliability of the state-provided data, we interviewed state officials about the systems they used to collect and provide the data. We determined that the data were reliable for our reporting purposes.

To address the second objective, we spoke with program officials from each of the 10 states to determine their views on adjustments made to state programs, if any, in response to changes in federal and state funding. We also asked state officials to describe what factors may have accounted for changes in funding data over time and effects of the changes in funding. For the purposes of this report, we focused on changes to the 10 individual states' program data over time. Because the environmental programs to which states allocate grant money may differ in terms of scope, budgets, expenditures, and funding, the programs cannot be directly compared with one another, and our results cannot be generalized to all states and programs.

We conducted this performance audit from January to April 2013 in accordance with generally accepted government auditing standards. 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 the evidence provided provides a reasonable basis for our findings based on our audit objectives. A more detailed description of our objectives, scope, and methodology is presented in enclosure I.

Results in Brief

As EPA grant funding has decreased, the patterns and sources of funding for the 10 states' programs supported by the four EPA grants varied over the past 5 to 9 years, in constant fiscal year 2012 dollars. For example, Hawaii's expenditures from federal sources for its Air Quality program decreased from more than $1 million in fiscal year 2004 to less than $780,000 in fiscal year 2012 (in constant fiscal year 2012 dollars). Conversely, Oklahoma's expenditures from its General Fund for its Water Quality program fluctuated but increased from fiscal year 2004 through fiscal year 2012 (in constant fiscal year 2012 dollars), and Idaho's expenditures for its

[6]Because this was a nonprobability sample of states, the information we collected from these states cannot be generalized to all states but can provide some illustrative examples.

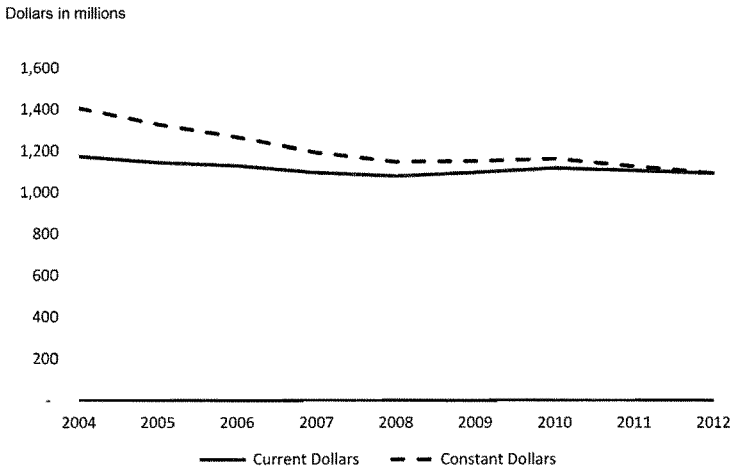
Air Quality program from its state General Fund remained relatively level over the same time period. State officials reported making different adjustments to programs in response to changes in funding. For example, several state officials reported reorganizing staff in some programs and implementing efforts to be more efficient, such as training staff to conduct work across multiple programs. At the same time, officials in several states reported reducing staff in some programs, cutting less critical programs, and increasing fees. These officials said the effects from these cuts include permitting backlogs, decreased capacity to conduct permitting and monitoring activities, and loss of outreach and technical assistance activities. In addition, officials from several states noted that further cuts would make it difficult to meet the requirements of their EPA grants for their environmental programs.

Background

EPA provides grant funds for programs conducted primarily by state, local, tribal, and other governmental partners, which we refer to collectively as "states" for the purpose of this report. Categorical grants provide federal funding to states to help them implement environmental programs and administer and enforce the nation's environmental laws. Certain major federal environmental statutes, such as the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act, among others, include provisions that allow EPA to authorize a state to assume responsibility for the day-to-day implementation of particular environmental programs. Under this approach, known as "cooperative federalism," the states have an important role as partners and co-regulators, and, among other things, issue and enforce permits, carry out inspections, and monitor and collect data. Certain of these statutes also authorize EPA to provide categorical grants to states to help fund their program responsibilities. States' uses of EPA's categorical grants are typically limited to defined activities, as the environmental laws authorizing these grants, along with EPA regulations, specify the type of activities that can be funded through the grant.

In the last 9 years, appropriations for EPA's categorical grants have generally decreased from a high of $1.17 billion in fiscal year 2004 to $1.09 billion in fiscal year 2012 (see fig. 1).

Figure 1: EPA's Categorical Grant Program Funds in Current and Constant Dollars, Fiscal Year 2004 to Fiscal Year 2012



Source: GAO analysis of Congressional Research Service data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using the federal fiscal year (October to September). Data include the portion of EPA's annual appropriations for State and Tribal Assistance Grants that is directed to categorical grants. EPA received funding from the American Recovery and Reinvestment Act from fiscal year 2009 to fiscal year 2012, but none of the funding was provided for categorical grants.

Once EPA receives its annual appropriation, it allocates funds to individual categorical grants consistent with congressional direction and EPA's budget proposal and justification report, as appropriate. EPA then allocates each categorical grant amount among eligible states according to established formulas and factors. Because, according to EPA, its allocation formulas have generally not changed in the past 10 years, each state's allocation of federal funds under these categorical grants has been proportionally affected when EPA's appropriations for the programs have changed.

We reviewed the following four EPA categorical grants, which comprised approximately 60 percent of EPA's total budget for categorical grants in fiscal year 2012, in this report.

- *Water Pollution Control*: Water Pollution Control grants are intended to provide continuing support for the prevention and abatement of surface and groundwater pollution from point sources, such as manufacturing facilities and wastewater treatment facilities, and nonpoint sources, such as pollutant runoff (e.g., fertilizers, pesticides, and sediment) from farms or construction sites carried by rainfall or snowmelt into water bodies. The grants pay for water quality management program activities including water quality planning and standards, monitoring and assessments, inspections and enforcement, permitting, training, advice and assistance to local agencies, and public information. States are required to expend nonfederal funds at least equal to those from fiscal year 1971, the year prior to the creation of EPA's program. Water Pollution Control grant funding is allocated to states by formula based on the extent of their water pollution problems.[7]

- *Nonpoint Source:* Nonpoint Source grants fund projects to reduce nonpoint source pollution and restore water bodies impaired by nonpoint sources of pollution. Under the program, EPA is authorized to award federal funds to states to implement nonpoint source management programs provided that states meet various minimum conditions, including development of an EPA-approved nonpoint source management program and annual progress reports. States must obtain a determination from EPA that they made satisfactory progress in meeting their goals from the prior year. In addition, states must maintain their funding levels for their nonpoint-source related programs at or above the average level of expenditures in fiscal year 1985 and fiscal year 1986, the 2 years prior to the creation of the program in 1987. In addition, states must expend funds from nonfederal sources equal to or greater than 40 percent of the total grant. Nonpoint Source grant funding is allocated to states using a formula established by EPA incorporating population, cropland, pasture, and forest harvest acreage, and other factors.

- *Air Quality*: Air Quality grants assist states and air pollution control agencies in planning, developing, establishing, improving, and maintaining programs for the prevention and control of air pollution; they also assist in the implementation of National Ambient Air

[7] According to EPA, if appropriated funds for Water Pollution Control grants increase at a level greater than inflation, the additional funds are allocated to states depending on the extent of pollution in the state. The data used for this portion of the grant allocation formula for these grants are updated at least every five years.

Quality Standards that EPA establishes to protect public health and the environment, which states are primarily responsible for attaining.[8] States, or state agencies as appropriate, may receive federal funding for up to 60 percent of their program's cost and are generally required to expend nonfederal funds that are equal to or greater than the amount of recurrent program expenditures from the previous fiscal year. Air Quality grant funding is allocated to states by EPA considering factors, including population, the extent of actual or potential air pollution problems, and financial need, among other factors.

- *Underground Injection Control*: Underground Injection Control grants provide funding to states to conduct programs to protect underground sources of drinking water from contamination by injection wells that place fluid—such as water produced from oil and gas wells during exploration and production that may contain a variety of contaminants, including salts and minerals—underground for storage or disposal. There are six classes of underground injection wells that may be regulated by states, depending on the substances injected into the wells. States use the grant funds to develop and maintain inventories of injection sites; develop and maintain databases containing compliance information on underground injection well activities; and perform underground injection permitting and enforcement activities. Grants can cover up to 75 percent of the state's underground injection control program's funds. Underground Injection Control grant funding is allocated by a formula that takes into consideration state population, state land area, and state injection practices.

State environmental agencies rely on three main sources of funding to support their core environmental programs: federal grant funds, state General Funds, and revenue raised primarily from fees, such as those paid by applicants for environmental permits. According to the Council, during fiscal year 2011 and fiscal year 2012, on average, fees contributed roughly 60 percent of state environmental agency funds; federal grants contributed roughly 30 percent; and state General Funds contributed roughly 10 percent.

[8]EPA has set national ambient air quality standards for carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur oxides.

Funding Patterns and Sources for 10 States' Programs Have Varied over the Last 5 to 9 Years

The funding patterns and sources of funds for 10 states' programs supported by the four EPA grants varied over the past 5 to 9 years,[9] in constant fiscal year 2012 dollars. For each of the three major sources of funding, states' funding or expenditures varied as indicated by the following examples (states' data are described in more detail in enclosure II):

- *Federal funding:* The patterns of federal funding for state programs supported by the four EPA grants varied in the 10 states we reviewed. For example, federal funding for North Dakota's Nonpoint Source program has steadily decreased from almost $7 million in fiscal year 2004 to less than $4 million in fiscal year 2012. In addition, Hawaii's expenditures from federal sources have steadily decreased for its Air Quality program, decreasing from more than $1 million in fiscal year 2004 to less than $780,000 in fiscal year 2012. Conversely, funding or expenditures from federal sources have remained relatively level or increased for some states' programs supported by the four EPA grants. For example, expenditures for Idaho's Air Quality program from federal sources fluctuated but remained level from fiscal year 2004 through fiscal year 2012. In addition, expenditures from federal sources for Oklahoma's Nonpoint Source and Water Quality programs fluctuated but increased from fiscal year 2004 to fiscal year 2012.

- *State General Funds:* The patterns of funding from state General Funds for state programs supported by the four EPA grants have also varied. For example, in Mississippi, over the past 5 years, state expenditures for the state's Water Quality and Nonpoint Source programs have decreased. In North Dakota and Idaho, state funding for the Nonpoint Source program has also decreased. Some states' expenditures, however, have increased or remained level for some programs. For example, state expenditures for Oklahoma's Water Quality program have fluctuated but generally increased from fiscal year 2004 through fiscal year 2012, and expenditures for Idaho's Air Quality program have remained level over the same period.

- *State funding from fees:* The patterns and use of state funding from fees, such as permitting fees, and other state sources of revenue for state programs supported by the

[9]The 10 selected states provided 5 to 9 years of data, for their programs supported by the four selected EPA categorical grants.

four EPA grants have varied over the same period. Some states do not use fees to fund some of the programs supported by the four EPA grants. Specifically, Hawaii and Nebraska have not used fees and other state sources of revenue to fund their Water Quality or Nonpoint Source programs. Conversely, some states rely on fees to fund the programs supported by the four EPA grants. For example, the majority of funding for New Jersey's Water Quality, Air Quality, and Underground Injection Control programs comes from fees from permit applications and renewals. In addition, some states have increased funding from fees and other state sources of revenue to make up for decreases in other sources of funding. For example, in recent years, Vermont increased funding from fees to make up for decreases in funding from the state's General Fund.

State Officials Reported Making Different Adjustments to Programs in Response to Changes in Funding and Expenditures

State officials reported making different adjustments to programs in response to funding or expenditure changes. Specifically, several state officials reported reorganizing staff in some programs and implementing efforts to be more efficient, such as training staff to conduct work across multiple programs. For example, officials in West Virginia said they adapted to fluctuating funding in the state's Nonpoint Source program by reorganizing other environmental programs to direct additional funds to the Nonpoint Source program, including other sources of federal funds. In another example, Mississippi officials said that they had trained staff to conduct both air and water quality permit inspections at regulated entities. In addition, some states reported hiring additional staff in certain programs. For example, officials from North Dakota said they had increased staffing levels for the Underground Injection Control program, primarily for the wells associated with the oil and gas industry, and did not experience adverse effects from funding cuts.

At the same time, officials from several states reported reducing staffing levels for some programs, cutting outreach and technical assistance activities in some programs, and increasing revenues from permitting fees, where appropriate. They reported that the effects from these adjustments including permitting backlogs and decreased capacity to conduct some activities, such as permitting and monitoring activities. Officials from some states said that they have instituted hiring freezes and relied on attrition and layoffs. These officials said that as funding and expenditures remained level or decreased, staffing levels decreased, affecting their departmental capacity to conduct regulatory activities such as permitting, inspections, and

monitoring activities. For example, according to Hawaii officials, cuts to personnel in state programs supported by Water Pollution Control grants led to cuts in the number of inspections at construction sites and industrial facilities, as well as coastal water quality monitoring stations. In addition, officials in Vermont reported that funding cuts for state programs supported by Air Quality grants led to staff reductions and reduced ability to conduct air quality permit renewals within the normal 5-year cycle. Vermont faces a backlog of applications for air quality permit renewals, and is operating on a 7- to 8-year permit renewal cycle.

Other actions that states took to adjust to changes in funding included cutting outreach and technical assistance programs and raising fees, where appropriate. Officials in several states reported having cut outreach and technical assistance activities to direct additional support to core environmental regulatory programs in their respective states. For example, officials in Oklahoma reported having cut key technical assistance and outreach activities in their water pollution control programs aimed at helping industry and municipalities comply with water quality permitting requirements. Oklahoma officials said they believe that cuts to these programs have reduced compliance and increased the need for additional enforcement activities in the state. Officials from other states said that their reliance on fees helped absorb federal and state funding cuts. For example, several officials in Nebraska reported that the state's use of fees helped the agency absorb funding cuts without furloughs or staff reductions. Some officials in Oklahoma, Vermont, and West Virginia also reported making requests to their respective state legislatures to increase permitting fees to offset reductions in federal funds or state general funds.

Officials in several states noted that additional reductions in state and federal funding will make it difficult to meet the requirements of EPA's grants to manage their environmental programs in the future. These officials indicated that, should there be further cuts to federal grant funding, the potential exists for returning some of their delegated environmental programs back to EPA. EPA officials told us they have not had any formal discussions with the states we reviewed about returning delegated authority for the environmental programs we reviewed to EPA.

Agency Comments

We provided a draft of this report to EPA for review and comment. On April 30, 2013, EPA provided technical comments via e-mail that we incorporated as appropriate. We also sent relevant portions of this report to the appropriate agencies in the 10 states we reviewed. The states provided technical comments, which we incorporated as appropriate.

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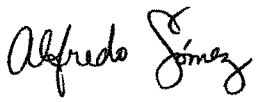
As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Acting Administrator of the Environmental Protection Agency, the appropriate congressional committees, and other interested parties. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff members have any questions regarding this report, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in enclosure III.

Sincerely yours,



J. Alfredo Gómez
Director, Natural Resources and Environment

Enclosures—3

Enclosure I: Objectives, Scope, and Methodology

The objectives of this report were to examine (1) funding patterns and sources for state programs supported by selected Environmental Protection Agency (EPA) grants over the last 10 years, and (2) views of state officials on the adjustments made to state programs, if any, in response to changes in federal and state funding.

To address the first objective, we focused our analysis on 10 states—Hawaii, Idaho, Michigan, Mississippi, Nebraska, New Jersey, North Dakota, Oklahoma, Vermont, and West Virginia—selected on the basis of state environmental funding data and EPA regions. Specifically, for each of the 10 EPA regions, we selected the state with the highest proportion of federal funds contributing to state environmental funding. We used environmental funding figures for fiscal year 2012 provided by the Environmental Council of the States (Council).[10] To assess the reliability of the data for our purpose of selecting states, we interviewed Council officials about their published data, and reviewed the methodology in the reports describing the methods they used to obtain and analyze the data, and we determined that they were reliable for our purpose. Because this was a nonprobability sample of states, the information we collected from these states cannot be generalized to all states but can provide some illustrative examples. We also focused our analysis on 4 of EPA's 24 categorical grants: (1) the Water Pollution Control grant provided under section 106 of the Clean Water Act, (2) the Nonpoint Source grant provided under section 319 of the Clean Water Act, (3) the State and Local Air Quality Management grant provided under section 105 of the Clean Air Act, and (4) the Underground Injection Control grant provided under the Safe Drinking Water Act. We chose the first three of these grants because, in total, they are the largest EPA categorical grants provided to states. We selected the fourth grant because the funding has remained level over many years. For the purposes of this report, we focused on changes to individual state programs that received EPA grants over time. Because the programs may differ in terms of scope and funding, they cannot be compared with one another and our results cannot be generalized to all programs.

To analyze the funding provided to state programs supported by these four EPA grants, we obtained state-level funding or expenditure data from each of the 10 states. Specifically, we requested that each state provide the (1) state programs that received funds from each of the

[10]The Environmental Council of the States is a national nonprofit, nonpartisan association of state and territorial environmental agency leaders. The purpose of the Council is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States of America.

four selected EPA grants, (2) 10 years of federal funding for each supported program for fiscal years 2003 through 2012, (3) 10 years of state General Funds provided to the corresponding programs, and (4) 10 years of funding for each program from fees or other nonfederal revenue sources. Depending on their state funding and accounting systems, some states could more easily provide funding data, and some states could more easily provide expenditure data. Two states—North Dakota and Vermont—provided funding data and the 8 remaining states provided expenditure data. The states that provided expenditure data said that their expenditures generally reflected their funding patterns. Six states provided data for 9 years, for fiscal year 2004 through fiscal year 2012; 1 state provided data for 8 years, for fiscal year 2005 through fiscal year 2012, and 3 states provided data for 5 years, for fiscal year 2008 through fiscal year 2012. To assess the reliability of the state-provided data, we interviewed officials about the data systems used to report the data and any significant changes to those systems that might have caused anomalies in the data. We also spoke with program officials about any significant fluctuations in the funding data. We determined the data to be reliable for our purposes of reporting general patterns in funding. We adjusted the data—both funding and expenditure data—to fiscal year 2012 figures to report them in current and constant dollars.

In our analysis of federal and state funding or expenditure data provided by the 10 states, we did not conduct a statistical trend analysis, but rather, applied some simple rules to categorize the direction of any changes in funding. If the overall funding or expenditures provided in fiscal year 2012 were less than 95 percent of the initial year's amount (which varied depending on the state), we described this change as a decrease in funding or expenditures. If funding or expenditures provided in fiscal year 2012 were more than 105 percent of that provided in the initial year, we described that as an increase in funding or expenditures. If the funding or expenditures provided in fiscal year 2012 were within 5 percent of that provided in the initial year, we described that as level funding. Because we did not conduct a trend analysis, it is difficult to assess whether changes over time exceed the changes that would be expected from random fluctuation. Nonetheless, we can provide descriptions of the data and patterns in the data according to the rules provided.

To address the second objective, to examine the views of state officials on any adjustments made to state programs in response to changes in federal and state funding, we spoke with officials from each state's environmental agency. We discussed the changes made to the states' water, nonpoint source, air quality, and underground injection control programs over the

period for which data were provided, which varied by state. We also discussed the effects on programs from the adjustments made and any strategies the agencies may have adopted to deal with the effects. In some cases, officials provided numbers to illustrate these effects, such as the numbers of staff available, staff cut, or other actions taken. We did not assess the reliability of these data, as they were provided to illustrate the effects that occurred and were provided by state officials, who were the best sources of such information.

We conducted this performance audit from January to April 2013 in accordance with generally accepted government auditing standards. 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 the evidence provides a reasonable basis for our findings based on our audit objectives.

Enclosure II: Ten States' Funding for Programs Supported by Four EPA Categorical Grants

This enclosure includes details on reported state funding for programs that are supported by four EPA categorical grants, including the Water Pollution Control, Nonpoint Source, Air Quality, and Underground Injection Control grants. The 10 states we reviewed are Hawaii, Idaho, Michigan, Mississippi, Nebraska, New Jersey, North Dakota, Oklahoma, Vermont, and West Virginia. Two states—North Dakota and Vermont—provided funding information, while the eight remaining states provided expenditure data for their programs. According to state officials, their expenditures approximate their funding patterns. The 10 states provided data for different periods of time, depending on their individual data systems: 6 states provided data for the 9-year period of fiscal year 2004 through fiscal year 2012, 1 state provided data for the 8-year period from fiscal year 2005 through fiscal year 2012, and 3 states provided data for a 5-year period from fiscal year 2008 through fiscal year 2012.

This enclosure contains funding or expenditure data for the state programs supported by the four EPA grants we reviewed. To evaluate the funding patterns for specific programs, we applied the following rules. If the overall funding or expenditures provided in fiscal year 2012 were less than 95 percent of the initial year's amount (which varied by state), we described this change as a decrease in funding or expenditures. If funding or expenditures provided in fiscal year 2012 were more than 105 percent of that provided in the initial year, we described that as an increase in funding or expenditures. If the funding or expenditures provided in fiscal year 2012 changed less than 5 percent from data provided in the initial year, we described that as level funding. We present this data in both current and constant fiscal year 2012 dollars; we assessed funding patterns using the data adjusted to constant dollars.

Hawaii

Hawaii's Department of Health is responsible for managing the air and water resources, among other programs, within the state. As the state's regulatory agency, this department provides air and water quality permits to limit the discharge of pollutants and their effects on human health and the environment. The Department of Health has several water and air quality programs—Water Quality, Nonpoint Source Management, and Air Quality programs—that are supported by three of the four EPA grants. Hawaii has an Underground Injection Program, but does not manage the program for EPA and does not receive an EPA grant for the program.

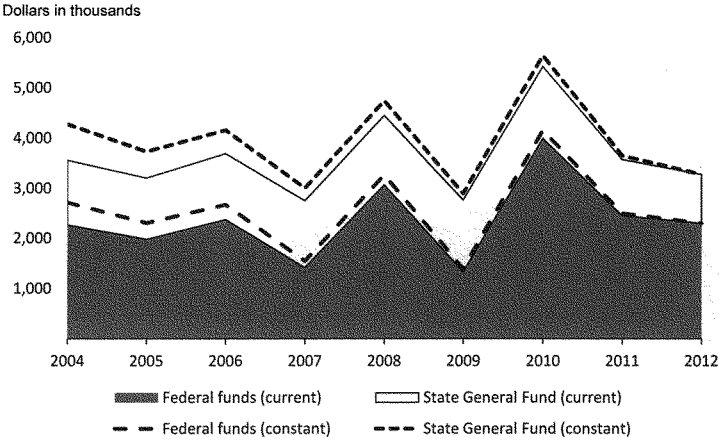
Hawaii's expenditures for the programs supported by the EPA grants we reviewed varied from fiscal year 2004 through fiscal year 2012. A discussion of the state's expenditures of federal and state funds follows.

Federal funds: From fiscal year 2004 through fiscal year 2012, Hawaii's expenditures of federal funds for the Water Quality (see fig. 2), Nonpoint Source (see fig. 3), and Air Quality (see fig. 4) programs have fluctuated and decreased.[11]

State funds: Similarly, Hawaii's expenditures from the state General Fund for the state's Water Quality and Nonpoint Source programs also fluctuated and decreased (see fig. 2 and fig. 3). Expenditures from state funds for the Air Quality program increased over the 9-year period, (see fig. 4). The state expended fees and other funding for the Underground Injection Program, the amount of which remained relatively level from fiscal year 2004 through fiscal year 2012 (see fig. 5).

[11]State dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using Hawaii's fiscal year (July to June).

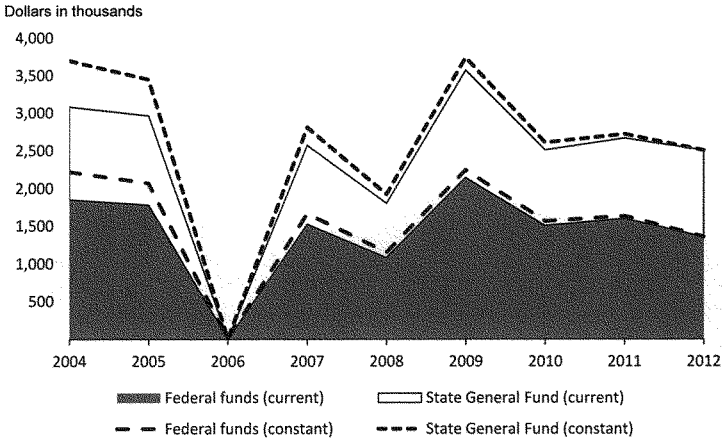
Figure 2: Hawaii's Total Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Hawaii's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Hawaii's fiscal year (July to June).

Figure 3: Hawaii's Total Nonpoint Source Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012

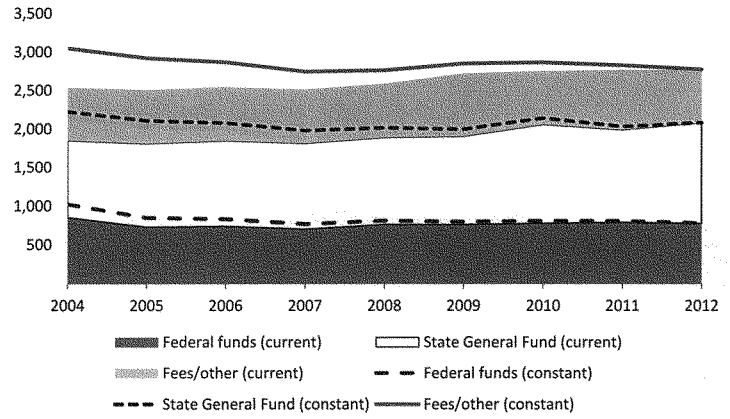


Source: GAO analysis of Hawaii's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Hawaii's fiscal year (July to June). In 2006, EPA did not award federal funds for Hawaii's Nonpoint Source program because unobligated federal funds from prior years were adequate to fund operations.

Figure 4: Hawaii's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012

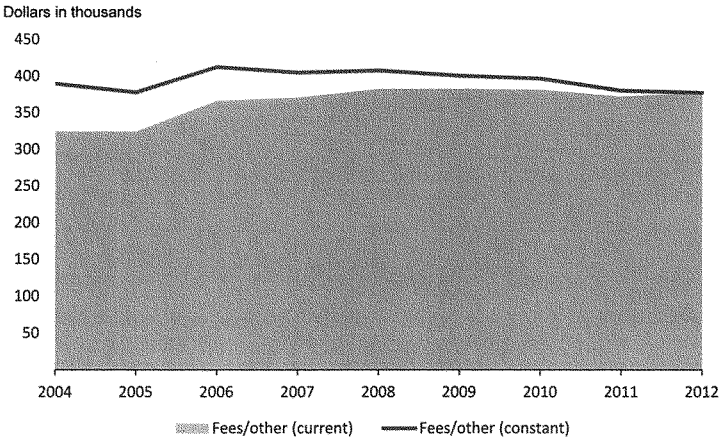
Dollars in thousands



Source: GAO analysis of Hawaii's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Hawaii's fiscal year (July to June).

Figure 5: Hawaii's Total Underground Injection Control Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Hawaii's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Hawaii's fiscal year (July to June).

According to department officials, state employees have been furloughed in the last 3 years, and staffing has been reduced for some department programs, while staffing for others has remained steady. For fiscal year 2010 and fiscal year 2011, all state employees were furloughed 2 days per month, for a total of 24 days per year and 48 days over the 2-year period, according to department officials. State salaries were also cut 5 percent in fiscal years 2012 and 2013. Within the department, as a result of recent reductions in force, 4 staff positions were cut from the department's safe drinking water branch (staff were reduced from 9 to 5) and 8 staff positions were cut from the clean water branch (staff were reduced from 41 to 33). Within the clean water branch, some inspection resources and monitoring resources were cut and one engineering position was cut. In contrast, the staffing levels for the air quality branch have remained steady, at 30, as have staffing levels for the Nonpoint Source program and the Underground Injection Control program, which have 6 and 4 staff, respectively, through 2012.

Reduced funding over the last decade has affected the department's ability to carry out responsibilities associated with three of the four selected categorical grants, according to department officials. For example, officials said that staff cuts in the clean water branch resulted

in 3 to 5 fewer individual permits being issued per year. With the loss of four monitoring positions, officials estimated that monitoring at beaches and other coastal stations declined from an average of 5,000 individual samples per year to about 1,500. In addition, the branch now conducts about 20 to 30 fewer inspections per year at construction and industrial facilities. Reductions in drinking water branch staff eliminated the program's presence on Maui, Kauai, and half of Hawaii Island. As a result, officials said the responsibility for drinking water sampling has shifted to regional and local boards, which have to make appointments with state labs to get results for the water quality samples. This has required a lot of training, according to the officials. Decreased nonpoint source management funds have largely affected local contractors who are responsible for implementing watershed projects. In contrast, the department's Underground Injection Control program is fully funded from a state revolving fund, known as the Environmental Response Revolving Fund. This fund is capitalized by a tax on each barrel of oil sold by a distributor in the state, as well as other sources of revenue, and according to state officials, as a result, the funding and workload have remained relatively level and steady.

Idaho

Idaho's Department of Environmental Quality is responsible for managing the air, land, and water resources within the state. As the state's regulatory agency, it provides air, water quality, and hazardous waste permits to limit the discharge of pollutants and their effects on human health and the environment. Its key programs responsible for carrying out these tasks include the Water Quality program, Nonpoint Source program and Air Quality program. The Idaho Oil and Gas Commission, not the Department of Environmental Quality, manages the Underground Injection Control program for the state.

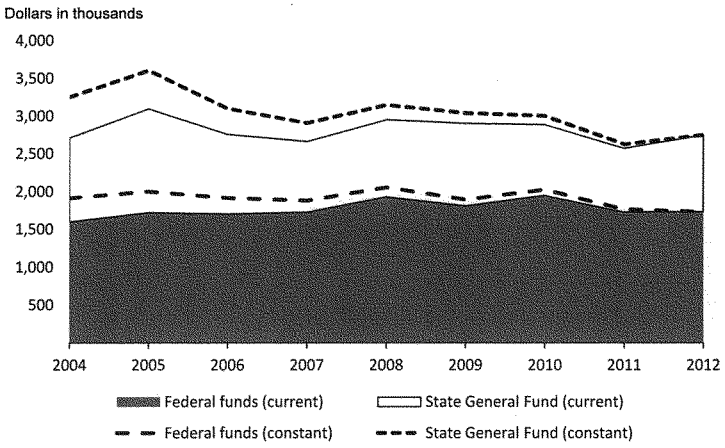
Idaho's expenditures for the programs supported by the four EPA grants we reviewed varied from fiscal year 2004 through fiscal year 2012. A discussion of the state's expenditures of federal and state funds follows.

Federal funds: Expenditures of federal funds for the state's Water Quality program decreased from fiscal year 2004 through fiscal year 2012 (see fig. 6).[12] Expenditures of federal funds for the state's Nonpoint Source program fluctuated and also decreased from fiscal year 2004 through fiscal year 2012 (see fig. 7). The state's expenditures of federal funds for its Air Quality and Underground Injection Control programs fluctuated, but stayed relatively level over the same time (see fig. 8 and fig. 9).

State funds: Idaho's expenditures of state funds for its Water Quality (see fig. 6) and Nonpoint Source (see fig. 7) programs fluctuated and decreased from fiscal year 2004 through fiscal year 2012. The state's expenditures for its Air Quality program fluctuated, but remained relatively level over the 9 years, in part because the program is a high departmental priority, according to the officials (see fig. 8). State expenditures for the Underground Injection Control program, which is managed by the state's Oil and Gas Commission, fluctuated from fiscal year 2004 through fiscal year 2010 and then were zeroed out in fiscal year 2011 and fiscal year 2012 (see fig. 9).

[12]State dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using the state's fiscal year (July to June).

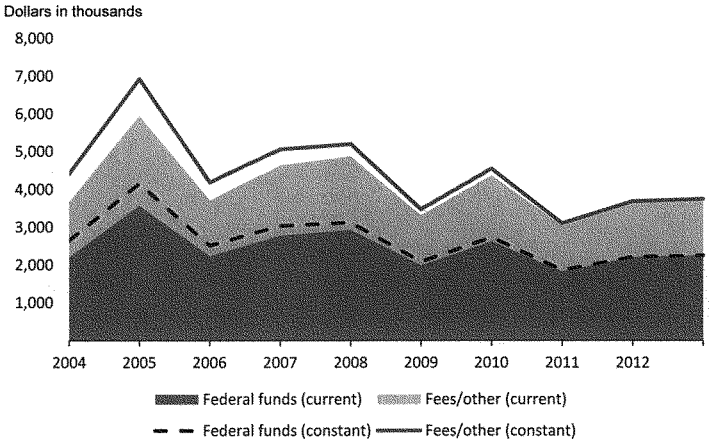
Figure 6: Idaho's Total Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Idaho's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Idaho's fiscal year (July to June).

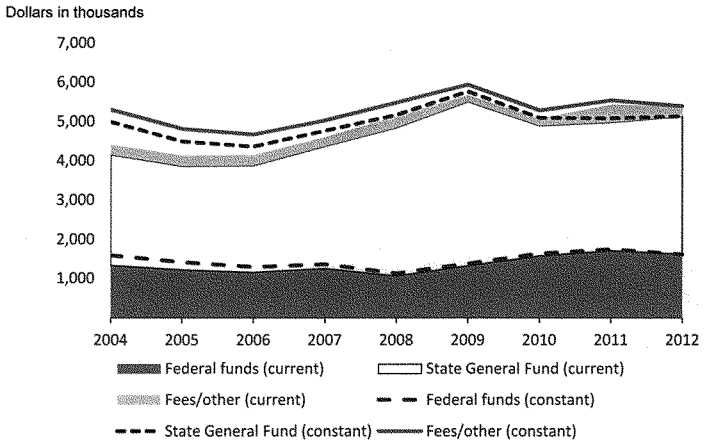
Figure 7: Idaho's Total Nonpoint Source Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Idaho's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Idaho's fiscal year (July to June). EPA's Nonpoint Source grant terms require states to combine federal EPA funds with a 40 percent nonfederal match. The fees/other in the above figure represent the nonfederal portion, which may include state General Funds in some cases.

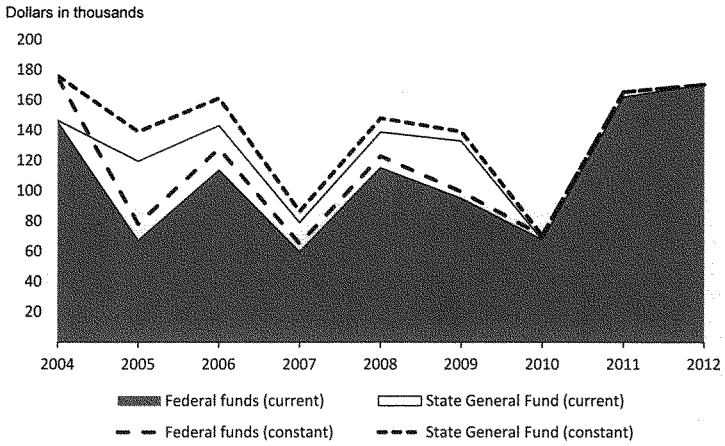
Figure 8: Idaho's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Idaho's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Idaho's fiscal year (July to June).

Figure 9: Idaho's Total Underground Injection Control Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Idaho's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using the calendar year, the years in which the state provided the data.

According to officials, the department has responded to overall budget reductions by retaining staff in key programs, eliminating some positions, and when necessary, furloughing employees. For example, the department eliminated 22 positions over the last 10 years. In addition, the department had six mandatory furloughs in a year and two in another. To manage with fewer staff, the Idaho Department of Environmental Quality has reduced or eliminated other programs to maintain the core water and air quality programs, according to the department's Chief Financial Officer. For example, department officials told us that because several key programs supported by EPA grants are top agency priorities, other program funds have been redirected to these programs as overall department funding has decreased. As a result, the department has left positions unfilled, allowed attrition, shifted people into other positions, and furloughed some employees in other programs. Staffing levels in the water quality programs were unchanged until fiscal year 2010, when department officials said staffing levels decreased because of state budget cuts. Similarly, air quality program staff levels decreased in previous years, according to department officials, because of state budget cuts. Staffing levels for the state's Nonpoint Source program have remained relatively steady at four or five staff, but because nearly 80

percent of Idaho's nonpoint source grant funds are passed through for projects at the local level, reduced funding levels have affected the number and scope of projects that are funded.

As budgets remained level or decreased, department officials said the department has eliminated programs and reduced its responsibilities under EPA grants. For example, the department suspended its beneficial use reconnaissance program—a water quality monitoring program—for more than 2 years because of funding shortfalls. In addition, in 2010, the department had to ask EPA for an exemption to certain requirements on its air quality grant to match funding and maintain spending at a specific level because state funding for the program was about $500,000 less than the amount EPA requires the state to provide to qualify for the grant. According to the department's Chief Financial Officer, EPA air quality grant funds are matched with resources from the state's General Fund, and at this point, there is no additional funding available from the General Fund to meet the matching requirements for federal grants. According to the Chief Financial Officer, if EPA air quality grants are reduced, the department will need to have a corresponding reduction in program commitments.

Michigan

Michigan's Department of Environmental Quality is responsible for managing the air, land, and water resources within the state, including managing programs to improve the quality of the Great Lakes. As the state's regulatory agency, it provides air and water quality permits to limit the discharge of pollutants and their effects on human health and the environment. The department has two programs that receive three EPA grants, the Surface Water Quality program and the Air Quality program. The state does not have authority from EPA to manage the Underground Injection Control program; EPA Region 5 manages that program for the state.

Michigan's expenditures for the environmental programs supported by the EPA grants we reviewed varied from fiscal year 2008 through fiscal year 2012. A discussion of the state's expenditures of federal and state funds follows.

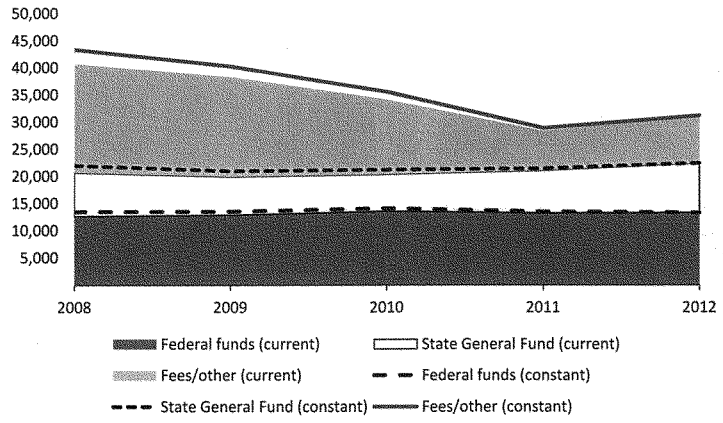
Federal funds: The state's expenditures from federal funds for its Surface Water Quality program stayed relatively level for fiscal year 2008 through fiscal year 2012 (see fig. 9).[13] Figure 10 shows the state's expenditures from federal funds for its Air Quality program increased slightly for fiscal year 2008 through fiscal year 2012.

State funds: Michigan's expenditures from state funds for the Surface Water Quality and Air Quality decreased overall from fiscal year 2008 through fiscal year 2012. The state's Surface Water Quality program, which uses both Water Pollution Control grant funds and Nonpoint Source grant funds, experienced somewhat increased funding from the state's General Fund, although its fee funding decreased from fiscal years 2008 through 2012 (see fig. 10). The department has the ability to charge fees for permits that it provides to permit holders and also charges fees on petroleum products that go into a dedicated clean-up fund. The state's Air Quality program received less funding from the state's General Fund since fiscal year 2008, although funding from fees and other temporary sources such as the refined petroleum funds were used in that time (see fig. 11).

[13]State dollars are presented in both current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using Michigan's fiscal year (October to September).

Figure 10: Michigan's Total Surface Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012

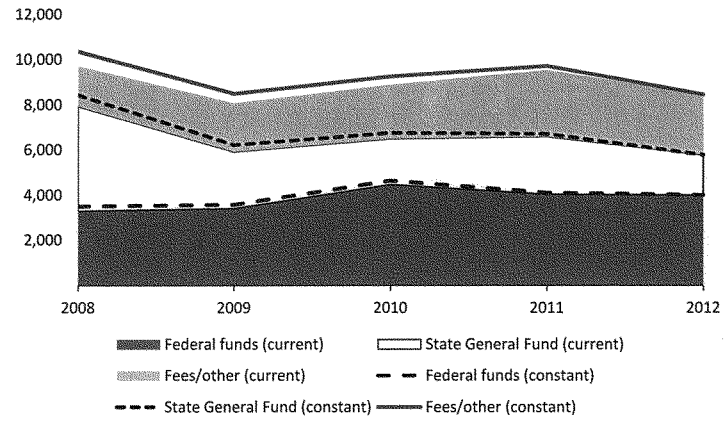
Dollars in thousands



Source: GAO analysis of Michigan's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Michigan's fiscal year (October to September). Michigan has reorganized its department several times and for this reason could only provide 5 years of data. Michigan funds its Surface Water Quality Program with both Water Pollution Control funding and Nonpoint Source funding. It does not account for these funds separately, however, and thus could not provide separate expenditures associated with the grants.

Figure 11: Michigan's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012



Source: GAO analysis of Michigan's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Michigan's fiscal year (October to September). Michigan has reorganized its department several times and for this reason could only provide 5 years of data.

According to officials from Michigan's Department of Environmental Quality, the department has adapted to decreasing budgets by retaining staff in key programs, reducing staff in some programs, and reorganizing programs. For example, the state has used early retirements to reduce staff, and as a result, the Surface Water Quality program declined from more than 190 to about 165 staff. In contrast, staffing for the Air Quality program has remained stable over the last 5 years, even as overall staffing levels for the division in which the program resides have declined from 216 to 178 staff. In addition, the department has implemented furloughs and a process called "banked leave time" that defers hours worked for the future.

According to department officials, the programs have eliminated or reduced some functions to adapt to reduced staffing levels. For example, the department has reduced the outreach and education programs that help small communities and businesses meet state and federal requirements. Officials said the department has taken these actions to focus resources on

required programs; however, even with these changes, officials said that the Surface Water Quality program is taking longer to issue permits and has reduced site inspections and follow-up on enforcement actions. Furthermore, the Air Quality program was restructured to make its processes more efficient, but department officials said that they are concerned about developing a future backlog as the program issues more than 440 permits annually. In addition, the program will not be able to hold meetings with permit holders that help them prepare their permit applications. The department requested fee increases in the last 4-year fee cycle to make up for funding cuts; according to officials, these fees sunset and the department must renew requests for fees after each cycle. However, according to the department's officials, if further budget cuts at the federal and state level occur, the department may have difficulty performing some critical activities—such as meeting deadlines for issuing the State Implementation Plan, inspection and monitoring minor air quality sources, and inspection and monitoring of water quality—and may need to discuss returning some functions to EPA.

Mississippi

Mississippi's Department of Environmental Quality is responsible for protecting the health, safety, and welfare of its citizens through conserving the state's natural resources and responsible regulation of the environment. The agency has four programs that receive the EPA grants we reviewed, the Water Quality program, the Nonpoint Source program, the Air Quality program, and the Underground Injection Control program. The department also has separate Permitting and Compliance divisions that use EPA grant funds to help administer the work of issuing permits to municipalities, industries, and other entities in the state, as well as inspecting these entities and working to ensure compliance with federal and state permits.[14] In addition to the department's programs, the Mississippi State Oil & Gas Board receives funds from the Underground Injection Control grant to manage the state's injection wells associated with the oil and gas industry.

Mississippi's expenditures for the environmental programs supported by the EPA grants we reviewed varied from fiscal year 2008 through fiscal year 2012. A discussion of the state's expenditures of federal and state funds follows.

Federal funds: Mississippi's expenditures of federal funds for its Water Quality, Nonpoint Source, and Air Quality programs decreased from fiscal year 2008 through fiscal year 2012 (see fig. 12 through fig. 14).[15] Over the same period, the state's expenditures of federal funds remained level for the Underground Injection Control program (see fig. 15).

State funds: State expenditures of state funds for the Water Quality, Nonpoint Source, Air Quality, and Underground Injection Control programs have decreased from fiscal year 2008 through fiscal year 2012, according to state officials, as the state has provided less funding from the state's General Fund.[16] Further, Mississippi's Department of Environmental Quality does not

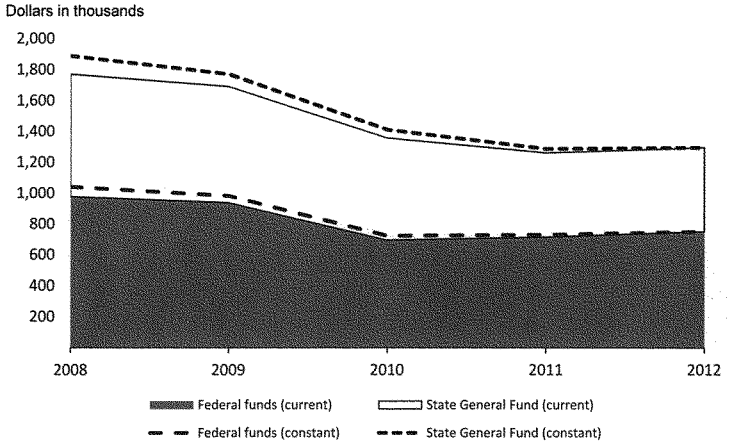
[14]Mississippi receives much of its Water Pollution Control, Air Quality, and Underground Injection Control grant funding in the form of a Performance Partnership Grant, which identifies a number of activities to be accomplished by the state and allows the state to move the funding where it is needed among those activities. Mississippi puts some of its grant funding into its Permitting and Compliance divisions, according to state officials, and expenditures are not tracked by source of funding. As a result, the state's federal expenditures in this report do not include expenditures for these activities.

[15]State dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using Mississippi's fiscal year (July to June).

[16]Mississippi puts some of its grant funding into its Permitting and Compliance divisions, according to state officials, and expenditures are not tracked by source of funding. As a result, the state's expenditures from state funds in this report do not include expenditures for these activities.

have the authority to charge fees for its permits, according to department officials. Figures 12 through 15 show the state's expenditures for fiscal year 2008 through fiscal year 2012.

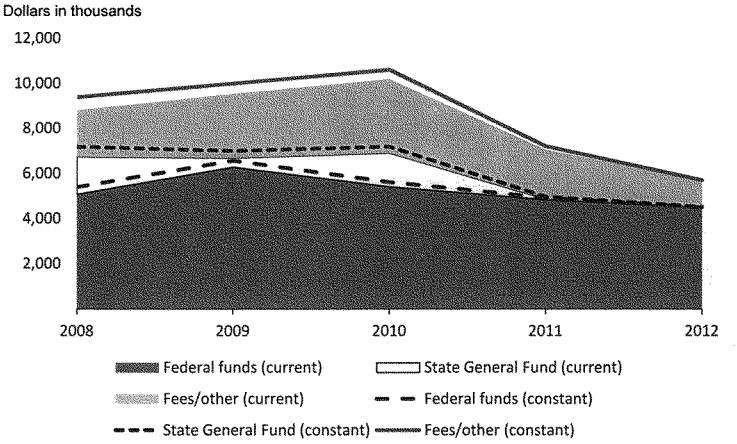
Figure 12: Mississippi's Total Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012



Source: GAO analysis of Mississippi's data.

Note: Funds have been adjusted to constant fiscal year 2012 dollars using Mississippi's fiscal year (July to June). Mississippi provided 5 years of data. Mississippi's data do not include funding provided to its Permitting and Compliance divisions because the department does not separately track permitting and compliance activities to air, water, and other functions.

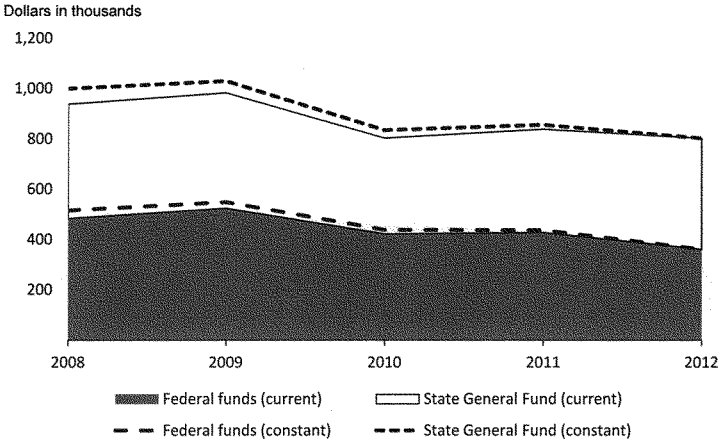
Figure 13: Mississippi's Total Nonpoint Source Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012



Source: GAO analysis of Mississippi's data.

Note: Funds have been adjusted to constant fiscal year 2012 dollars using Mississippi's fiscal year (July to June). Mississippi provided 5 years of data.

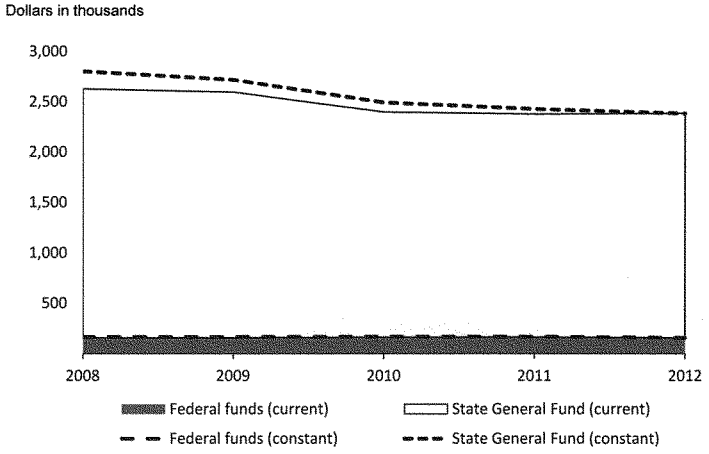
Figure 14: Mississippi's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012



Source: GAO analysis of Mississippi's data.

Note: Funds have been adjusted to constant fiscal year 2012 dollars using Mississippi's fiscal year (July to June). Mississippi provided 5 years of data. Mississippi's data do not include funding provided to its Permitting and Compliance divisions because the department does not separately track permitting and compliance activities to air, water, and other functions.

Figure 15: Mississippi's Total Underground Injection Control Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012



Source: GAO analysis of Mississippi's data.

Note: Funds have been adjusted to constant fiscal year 2012 dollars using Mississippi's fiscal year (July to June). Mississippi provided 5 years of data. Mississippi's data does not include funding provided to its Permitting Division because the department does not separately track permitting activities to air, water, and other functions.

According to department officials, the department has adjusted to level or decreasing budgets for the 5-year period from fiscal year 2008 through fiscal year 2012 by limited hiring of new staff, limited purchases of new equipment, and increasing staff efficiency. At the same time, the state's workload has been increased by responding to Hurricane Katrina and the BP oil spill. For the four programs that receive EPA grants, department officials said that they have implemented cross-training to allow staff to work in multiple programs and thereby help support program work with the same or reduced staff levels. In addition, some programs, such as the department's Underground Injection Control program, have increased their workloads without increasing staff, according to officials. Over the same period, the Mississippi State Oil & Gas Board has not increased staff and, according to officials, the board's federal funding has increased or remained level.

Department officials said that they have been able, generally, to complete the work required in their EPA grant agreements. For example, the state's Air Quality program has continued to meet its grant requirements, which include issuing permits and conducting inspections, although it has had a slight decrease in staff. According to officials, a new database increased the program's productivity. In addition, with cross-training, air quality and water quality permits have been performed by the same individual in the field for a regulated entity. However, the officials said that they expect no increases in state General Funds in upcoming years. This, in addition to federal budget cuts over the next several years, will likely cause reduced funding to these programs. Should this happen, according to Mississippi officials, program requirements may be more challenging to meet.

Nebraska

Nebraska's Department of Environmental Quality is responsible for protecting the quality of Nebraska's air, land, and water resources. The agency houses the key environmental permitting programs that receive EPA grants including the Water Quality, Nonpoint Source, Air Quality, and part of the Underground Injection Control programs. The Department of Environmental Quality regulates most classes of underground injection wells under Nebraska's Underground Injection Control program, while Nebraska's Oil and Gas Conservation Commission is responsible for managing wells associated with the oil and gas industry.

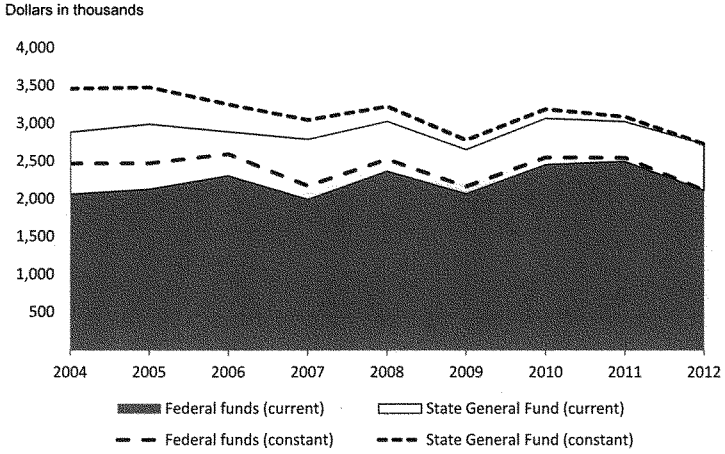
Nebraska's expenditures for the programs supported by the EPA grants we reviewed varied from fiscal year 2004 through fiscal year 2012. A discussion of the state's expenditures of federal and state funds follows:

Federal funds: State expenditures of federal funds for Water Quality (see fig. 16) and Underground Injection Control (see fig. 19) programs funding fluctuated but decreased from fiscal year 2004 through fiscal year 2012.[17] State expenditures of federal funds for the Nonpoint Source programs fluctuated from fiscal year 2004 through fiscal year 2012, increasing in fiscal year 2009 and fiscal year 2010 and then decreasing through fiscal year 2012 (see fig. 17). State expenditures of federal funds for the Air Quality program also fluctuated, but remained relatively level over the same period of time (see fig. 18).

State funds: State expenditures of state funds for the state's Water Quality and Underground Injection Control programs fluctuated but decreased from fiscal year 2004 through fiscal year 2012 (see fig. 16 and fig. 19). State expenditures for the Nonpoint Source program fluctuated from fiscal year 2004 through fiscal year 2012, increasing in fiscal year 2009 and fiscal year 2010 and then decreasing through fiscal year 2012 (see fig. 17). State expenditures of state funds for the Air Quality program also fluctuated, but increased over the same period of time (see fig. 18).

[17] All state dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using Nebraska's fiscal year (July to June).

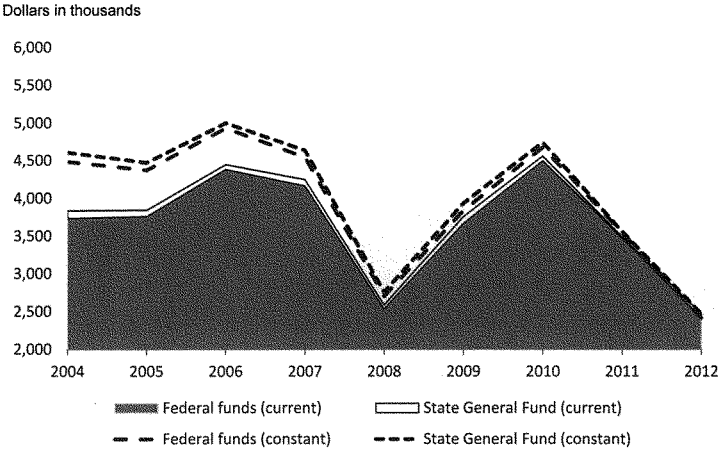
Figure 16: Nebraska's Total Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Nebraska's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Nebraska's fiscal year (July to June).

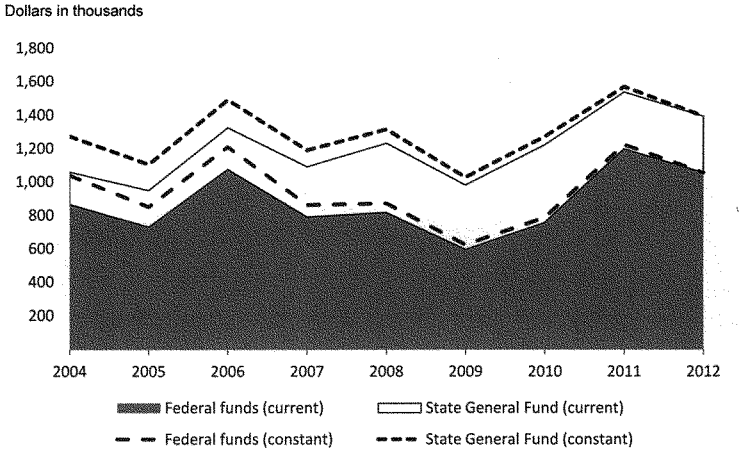
Figure 17: Nebraska's Total Nonpoint Source Program Expenditures By Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Nebraska's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Nebraska's fiscal year (July to June). According to Department officials, reimbursements from Nonpoint Source project activities decreased in 2008, resulting in decreased overall expenditures for the Nonpoint Source program.

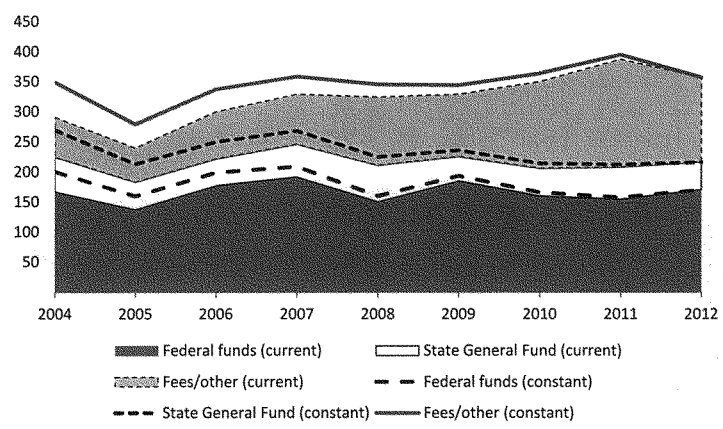
Figure 18: Nebraska's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Nebraska's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Nebraska's fiscal year (July to June).

Figure 19: Nebraska's Total Underground Injection Control Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Nebraska's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Nebraska's fiscal year (July to June). Nebraska's data includes funding to both the Nebraska Department of Environmental Quality and the Nebraska Oil and Gas Commission. The Nebraska Oil and Gas Conservation Commission provided data by federal fiscal year.

According to department officials, the department's flexible budget structure and reliance on fees to support key programs has helped the agency plan to absorb funding cuts without furloughs or reductions-in-force. Specifically, only about 10 percent of the department's funding comes from the state's General Fund and approximately 45 percent comes from permitting fees. According to officials, staffing levels have remained relatively steady within the department and in the programs that receive funding from the four EPA grants we reviewed.

However, department officials also identified several effects on its environmental programs as funding has decreased. For example, department officials said the state legislature reduced funding for some outreach programs, including a recycling program and storm water management program for municipalities, to provide continued support for required programs, and department officials focused their funding on efforts to meet the conditions of EPA grants. In addition, officials from the Water Quality Division reported increasing the amount of time it takes to conduct the full cycle of required sampling activities for their surface water quality program from 5 to 6 years. As a result, due to the increased time period between sampling, officials

expressed concern that the department may be forced to make water quality permitting decisions using old or obsolete sampling data. Underground Injection Control officials in both the Department of Environmental Quality and the Nebraska Oil and Gas Commission said that the Underground Injection Control program's responsibilities are increasing, and both agencies are facing challenges keeping their respective programs staffed at sufficient levels.

New Jersey

The New Jersey Department of Environmental Protection's core mission is to protect the air, waters, land, and natural and historic resources of the state to ensure continued public benefit. The department manages, among other areas, Water Quality, Nonpoint Source, Air Quality, and Underground Injection Control programs that receive funding from the four EPA grants.

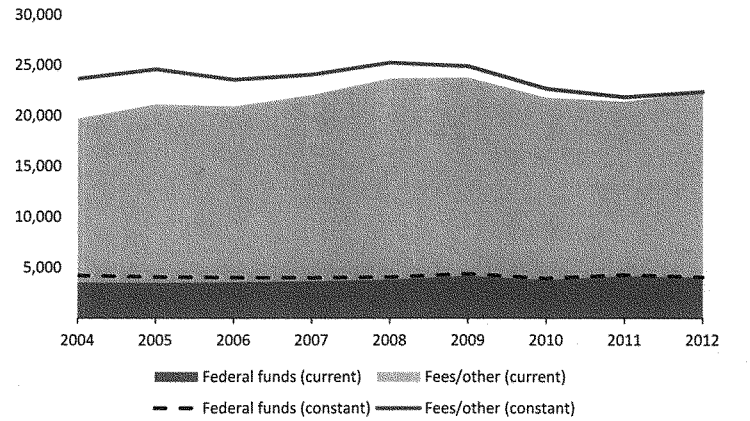
New Jersey's expenditures for the programs supported by the EPA grants we reviewed varied from fiscal year 2004 through fiscal year 2012. A discussion of the state's expenditures of federal and state funds follows.

Federal funds: State expenditures of federal funding for New Jersey's Water Quality program remained level from fiscal year 2004 through fiscal year 2012 (see fig. 20).[18] Figure 21 shows that the state's expenditures of federal funds for the Nonpoint Source program generally decreased over this time. State expenditures of federal funding for the state's Air Quality program fluctuated and increased over the same period (see fig. 22). Expenditures of federal funding for the state's Underground Injection Control Program generally decreased from fiscal year 2004 through fiscal year 2012 (see fig. 23).

State funds: Expenditures of state funding for the Water Quality, Nonpoint Source, and Air Quality programs have fluctuated, and generally decreased between fiscal year 2004 through fiscal year 2012 (see fig. 20, fig. 21, and fig. 22). Expenditures of state funding for the Underground Injection Control program fluctuated but increased from fiscal year 2009 through fiscal year 2011 and decreased in fiscal year 2012 (see fig. 23).

[18]All state dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using New Jersey's fiscal year (July to June).

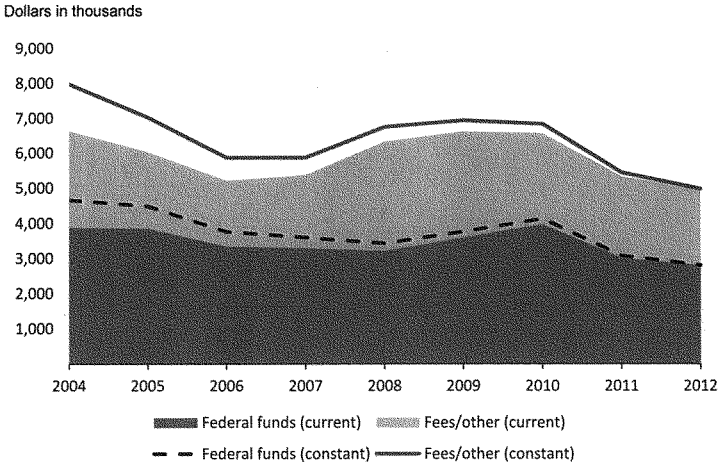
Figure 20: New Jersey's Total Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of New Jersey's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using New Jersey's fiscal year (July through June).

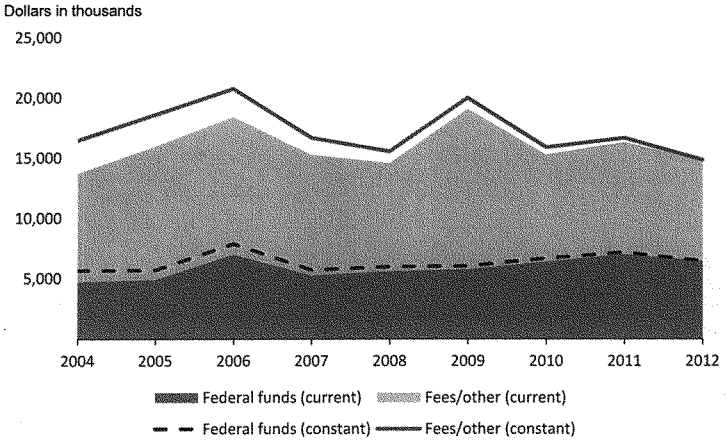
Figure 21: New Jersey's Total Nonpoint Source Program Expenditures by Source in Current and Constant Dollars, Fiscal Years 2004 through 2012



Source: GAO analysis of New Jersey's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using New Jersey's fiscal year (July through June).

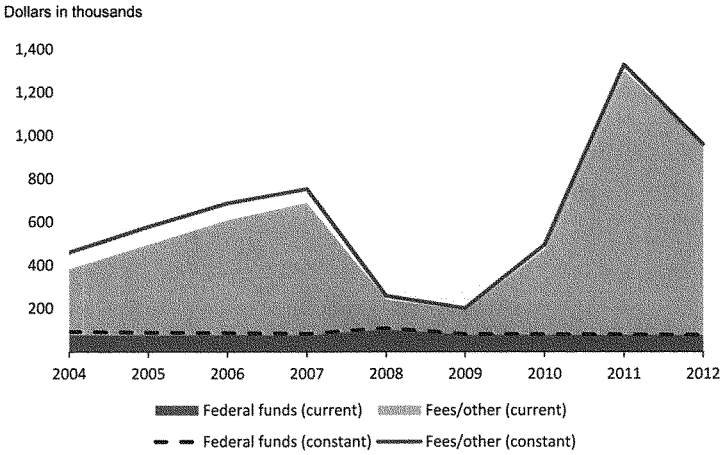
Figure 22: New Jersey's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Years 2004 through 2012



Source: GAO analysis of New Jersey's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using New Jersey's fiscal year (July through June).

Figure 23: New Jersey's Total Underground Injection Control Program Expenditures by Source in Current and Constant Dollars, Fiscal Years 2004 through 2012



Source: GAO analysis of New Jersey data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using New Jersey's fiscal year (July through June).

As expenditures decreased, according to officials, the Department of Environmental Protection has experienced a large decline in personnel. Officials noted that this was due to attrition over time, early retirement incentives, and statewide hiring freezes. Officials also noted that the department has not experienced reductions in force, but has been held to a strict freeze on hiring for the last 6 to 7 years, and staff for Water Quality, Nonpoint Source, and Air Quality programs have experienced declines. For example, according to data provided by the department, the number of staff has dropped from 24 to 13 in programs partially supported by Nonpoint Source grants and from 133 to 112 in programs supported by Water Quality grants between fiscal year 2004 and fiscal year 2012. To adapt to level or decreasing funding, according to officials, the department has realigned its water programs to concentrate on a comprehensive water resources model that addresses water quality issues by watershed.

New Jersey's water programs are experiencing longer processing times to complete permit renewals, according to department officials. For example, according to department officials, in the past, review and approval of new Underground Injection Control program permits required 4 to 5 months of turnaround time, whereas now they require 6 to 7 months. Department officials said the realignment of its water programs is intended to make more efficient use of staff and to allow greater flexibility to prioritize the most impaired water sources. For example, the program will now monitor water quality using a probability-based sample of water bodies in the state, rather than monitoring every body of water. Program staff within the department noted that this approach makes more efficient use of resources, however, they said the department has realized all the efficiencies possible through reorganization, and the department will need to find new ways of maintaining programs if budgets decrease further.

North Dakota

North Dakota's Environmental Health Section is one of seven sections in the North Dakota Department of Health and is responsible for safeguarding the quality of the state's air, land, and water resources. As the state's regulatory agency, the Environmental Health Section's primary functions include monitoring and enforcing compliance with state and federal environmental laws and coordinating with the EPA regarding state programs and related environmental issues. The Environmental Health Section manages injection wells used to discharge water and wastewater under the Underground Injection Control program, with the exception of wells associated with the oil and gas industry and mining. Underground injection wells related to the oil and gas industry and mining are regulated by the North Dakota Oil and Gas Division and the North Dakota Geologic Survey respectively.

North Dakota's funding for the programs supported by the EPA grants we reviewed varied from fiscal year 2008 through fiscal year 2012. A discussion of the state's federal and state funding follows:

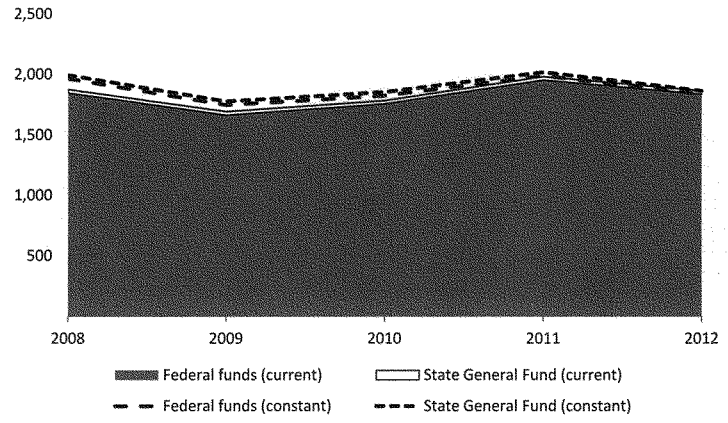
Federal funds: North Dakota's funding from federal sources for the state Water Quality, Nonpoint Source, Air Quality, and Underground Injection Control programs fluctuated but decreased from fiscal year 2008 to fiscal year 2012 (see fig. 24 through 27).[19]

State funds: State funding for Environmental Health Section programs supported with Water Quality, Nonpoint Source, and Air Quality grant funds has decreased over the last 5 fiscal years (see fig. 24 through fig. 26). Over the same period, state funding for the Underground Injection Control program has fluctuated but remained relatively level (see fig. 27).

[19] All state dollars are presented in current and constant dollars. While North Dakota's fiscal year is July to June, state officials provided federal fiscal year data. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using the federal fiscal year (October to September).

Figure 24: North Dakota's Total Water Quality Program Funding by Source in Current and Constant Dollars Fiscal Year 2008 through Fiscal Year 2012

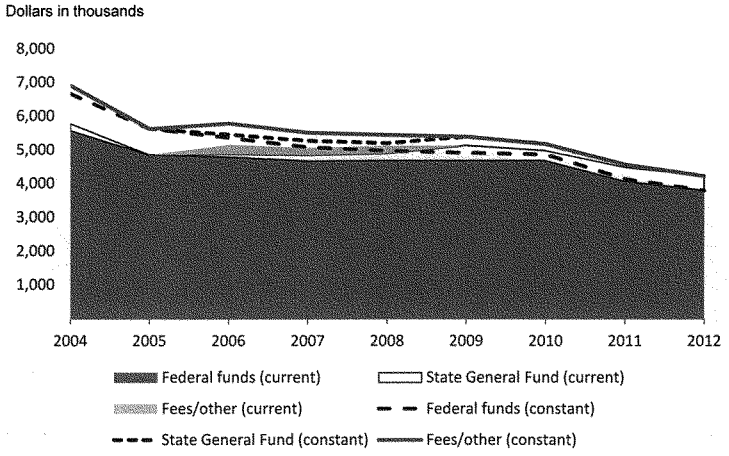
Dollars in thousands



Source: GAO analysis of North Dakota's data.

Note: While North Dakota's fiscal year is July to June, state officials provided federal fiscal year data. Constant dollars have been adjusted to fiscal year 2012 dollars using the federal fiscal year (October through September). North Dakota could only provide 5 years of data due to record-keeping limitations.

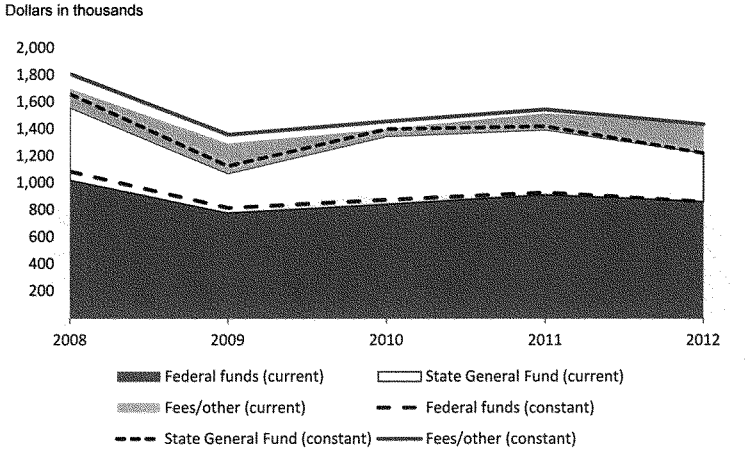
Figure 25: North Dakota's Total Nonpoint Source Program Funding by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of North Dakota's data.

Note: While North Dakota's fiscal year is July to June, state officials provided federal fiscal year data. Constant dollars have been adjusted to fiscal year 2012 dollars using the federal fiscal year (October through September).

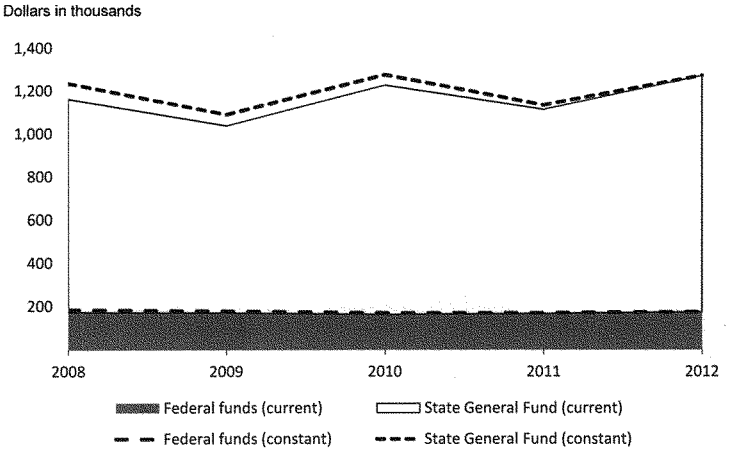
Figure 26: North Dakota's Total Air Quality Program Funding by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012



Source: GAO analysis of North Dakota's data

Note: While North Dakota's fiscal year is July to June, state officials provided federal fiscal year data. Constant dollars have been adjusted to fiscal year 2012 dollars using the federal fiscal year (October through September). North Dakota could only provide 5 years of data due to record-keeping limitations.

Figure 27: North Dakota's Total Underground Injection Control Program Funding by Source in Current and Constant Dollars, Fiscal Year 2008 through Fiscal Year 2012



Source: GAO analysis of North Dakota's data

Note: While North Dakota's fiscal year is July to June, state officials provided federal fiscal year data. Constant dollars have been adjusted to fiscal year 2012 dollars using the federal fiscal year (October through September). North Dakota could only provide 5 years of data due to record-keeping limitations. North Dakota's data includes funding to both the North Dakota Environmental Health Section and the North Dakota Oil and Gas Division.

According to North Dakota officials, in recent years, the Environmental Health Section has been asked to reduce its General Fund requests during each biennial state budget cycle; however, the Environmental Health Section has thus far been able to avoid staff reductions. Officials told us that flexibility in how the state allocates funding to the Environmental Health Section, as well as the flexibility of the grant agreement with EPA, has allowed the state to shift funds and resources to avoid cutting programs and staff. For example, the Environmental Health Section was able to reduce the size of its laboratory staff and shift the positions to scientific and engineering positions within core state environmental programs. In addition, the relatively small size of the Environmental Health Section allows for multitasking and cross-training of personnel. For example, to improve efficiency, qualified staff may conduct both air quality and water quality permitting and monitoring activities in certain regions of the state.

According to Environmental Health Section officials, the state legislature is unlikely to increase state funds for the programs, even if federal funds decreased. As a result, state officials said the state may no longer be able to meet the conditions of its EPA grant agreements and may need to return some programs to EPA. North Dakota Environmental Health Section officials told us they have not entered into formal discussions regarding which programs could be given back to EPA for implementation, but there have been some informal discussions at the state level.

Oklahoma

The Oklahoma Department of Environmental Quality's mission is to enhance the quality of life in Oklahoma and protect the health of its citizens by protecting, preserving and restoring the water, land and air of the state, to foster a clean, attractive, healthy, prosperous and sustainable environment. The agency houses the key environmental permitting programs that receive EPA grants: air quality, water quality, and others. Water Quality program management is shared by the Oklahoma Office of the Secretary of the Environment; Oklahoma Department of Environmental Quality, Oklahoma Water Resources Board; and Oklahoma Department of Agriculture, Food, and Forestry. The Oklahoma Office of the Secretary of the Environment partners with the Oklahoma Conservation Commission to administer Oklahoma's Nonpoint Source program. While the Department of Environmental Quality regulates most underground injection wells under Oklahoma's Underground Injection Control program, Oklahoma's Corporation Commission is responsible for managing wells associated with oil and gas production, which compose the majority of injection wells in the state.

Oklahoma's expenditures for the programs supported by the EPA grants we reviewed varied from fiscal year 2004 through fiscal year 2012. A discussion of the state's federal and state funding follows:

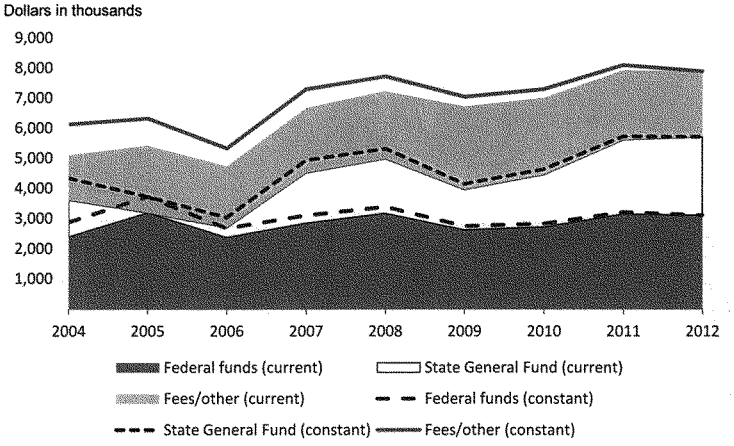
Federal funds: Oklahoma's expenditures of federal funds for its Water Quality and Nonpoint Source programs have fluctuated but increased from fiscal year 2004 through fiscal year 2012 (see fig. 28 and fig. 29).[20] Over the same time period, state expenditures of federal funds for the Air Quality program decreased (see fig. 30). State expenditures of federal funds for the Underground Injection Control programs fluctuated but remained relatively level from fiscal year 2004 through fiscal year 2012 (see fig. 31).

State funds: Expenditures of state funds for the Water Quality program have increased since fiscal year 2004 (see fig. 28). Expenditures of state funds for the Nonpoint Source program fluctuated, but decreased between fiscal year 2004 and fiscal year 2012 (see fig. 29). Expenditures of state funds for the Air Quality program increased from fiscal year 2004 to fiscal year 2009 before decreasing in fiscal year 2010 (see fig. 30). State expenditures for the

[20] All state dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using Oklahoma's fiscal year (July to June).

Underground Injection Control program have decreased slightly over the 9-year period (see fig. 31).

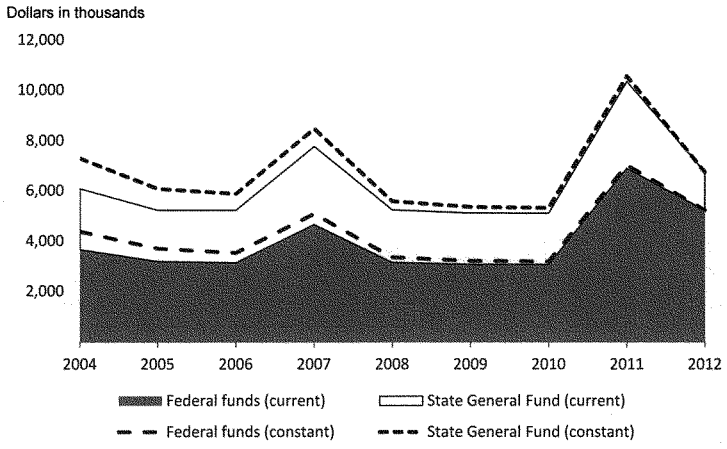
Figure 28: Oklahoma's Total Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Oklahoma's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Oklahoma's fiscal year (July through June). Water quality management funds are distributed to the Oklahoma Office of the Secretary of the Environment; Oklahoma Department of Environmental Quality, Oklahoma Water Resources Board; and Oklahoma Department of Agriculture, Food, and Forestry.

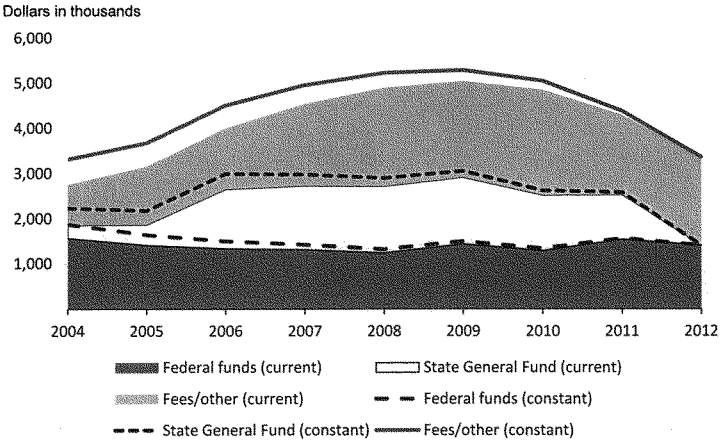
Figure 29: Oklahoma's Total Nonpoint Source Management Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Oklahoma's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Oklahoma's fiscal year (July through June). Nonpoint Source Management program funds are distributed to the Oklahoma Office of the Secretary of the Environment and the Oklahoma Conservation Commission. According to state officials, in recent years, Oklahoma received additional Nonpoint Source grant funding from EPA that had been deobligated from other states' nonpoint source programs and then reallocated to Oklahoma. However, according to state officials, the reallocated funding is not consistent on a year to year basis, and core funding for Oklahoma's Nonpoint Source program has decreased over the same time period.

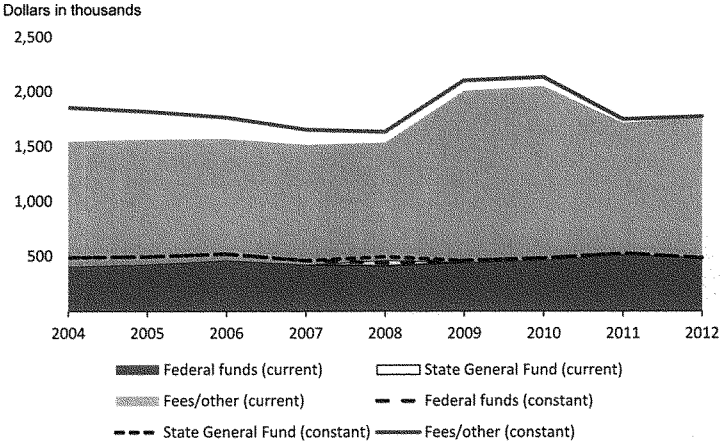
Figure 30: Oklahoma's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Oklahoma's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Oklahoma's fiscal year (July through June).

Figure 31: Oklahoma's Total Underground Injection Control Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of Oklahoma's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Oklahoma's fiscal year (July through June). Oklahoma's data includes funding to both the Oklahoma Department of Environmental Quality and the Oklahoma Corporation Commission. Funding for the Oklahoma Corporation Commission's Underground Injection Well Program was estimated from grant application data.

According to department officials, budget cuts have negatively affected several environmental programs in Oklahoma. For example, officials told us several air quality program positions were cut in fiscal year 2006 and, due to budget concerns, they still remain vacant. According to officials, the air quality program continues to operate at a 10 to 12 percent vacancy rate. In addition, according to officials, the Nonpoint Source program has lost more than 20 percent of its staff due to funding decreases. Officials also told us education and outreach programs aimed at helping industry and municipalities comply with water quality permitting requirements have been cut from the Water Quality programs because of decreased funding.

As staffing levels have been reduced, department officials said that the department has experienced some delays due to workload increases. For example, the state's Air Quality program has had to reprioritize compliance and enforcement activities to emphasize the major industrial sources of pollutant emissions. Officials in the Water Quality program reported an increase in permit noncompliance with federal regulations and an increased enforcement

workload as a result. In addition, the Water Quality program has also fallen behind on permit renewal activities, and department officials estimate that 15 to 20 percent of the department's major water quality permits have been expired at least 2 years.[21] Finally, department officials said that new federal requirements have placed an additional burden on already understaffed and underfunded programs. As a result, department officials said that Oklahoma may be required to relinquish some of its programs to EPA. Specifically, officials told us the department has a deadline of June 1, 2013 to secure adequate funding for its drinking water program, and said they are concerned that without adequate funding, Oklahoma may lose the authority to administer the program.

[21]Generally, if the permittee has properly filed a timely application for permit renewal, these expired permits continue to be in effect and enforceable until the permitting authority has issued a new permit

Vermont

The Vermont Department of Environmental Conservation's mission is to preserve, enhance, restore, and conserve Vermont's natural resources and protect human health for the benefit of current and future generations. The department manages the programs receiving support from the four EPA environmental grants we reviewed. The department also has responsibility for issuing most of the state's environmental permits.

Vermont's funding for the programs supported by the EPA grants we reviewed varied from fiscal year 2005 through fiscal year 2012. A discussion of the state's funding from federal and state sources follows.

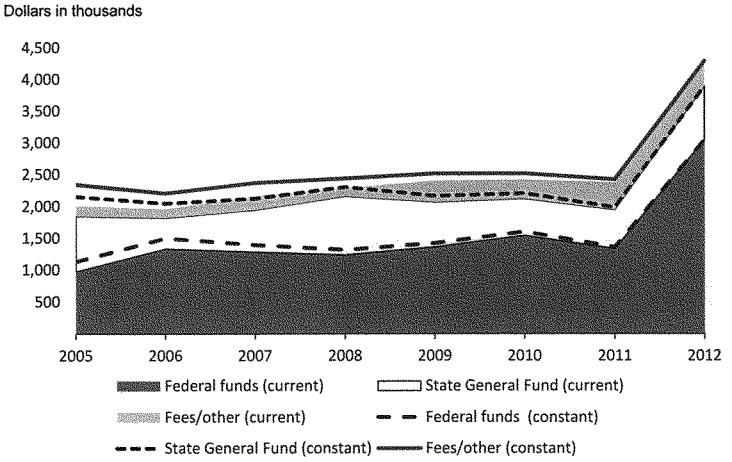
Federal funds: From fiscal year 2005 through fiscal year 2012, federal funding for the state's Water Quality program increased, with a large increase in fiscal year 2012 (see fig. 32).[22] Officials noted that the fiscal year 2012 funding increase in the state Water Quality program was due, in part, to extra grant funds that EPA provided in a 2-year supplemental grant that the state accounted for in its fiscal year 2012 budget. Federal funding for the state's Nonpoint Source program remained generally level, and federal funding for the Air Quality program increased, but more gradually than for the Water Quality programs (see fig. 33 and fig. 34). Federal funding for the state's Underground Injection Control program was zeroed out in fiscal year 2010, but increased in fiscal year 2011, and decreased in fiscal year 2012 (see fig. 35). According to Vermont officials, EPA initially planned to zero out the state's Underground Injection Control grant funding for fiscal year 2010, and Vermont considered eliminating the program; however, EPA ultimately provided funding that is not reflected in the state's fiscal year 2010 budget.

State funds: Vermont's funding for its Water Quality program fluctuated over the 8-year period, and remained generally level (see fig. 32). State funding for its Nonpoint Source program fluctuated from fiscal year 2008 through fiscal year 2012, and generally increased (see fig. 33). State funding for Vermont's Air Quality program fluctuated from fiscal year 2005 through fiscal year 2010, and remained relatively level at that reduced level through fiscal year 2012 (see fig. 34). State funding for the state's Underground Injection Control program fluctuated, receiving no state funding between fiscal year 2008 and fiscal year 2010 (see fig. 35). The state then

[22]All state dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using Vermont's fiscal year (July to June).

provided increased funding from the General Fund for the program in fiscal year 2011 and fiscal year 2012, and the program also received state funding from fees during those 2 years.

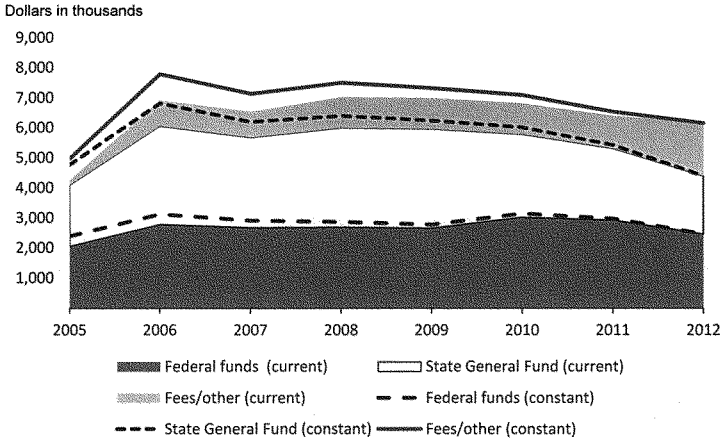
Figure 32: Vermont's Total Water Quality Program Funding by Source in Current and Constant Dollars, Fiscal Year 2005 through Fiscal Year 2012



Source: GAO analysis of Vermont's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Vermont's fiscal year (July through June). Vermont was able to report 8 years of data from fiscal year 2005 through fiscal year 2012. Records for years prior to 2005 are unavailable because they were damaged in flooding from Hurricane Irene. State agency officials noted that the 2012 funding increase in state Water Quality program supported by EPA's Water Pollution Control grant was due, in part, to extra grant funds within EPA region one that allowed EPA to provide the state with a two-year supplemental grant, which was accounted for in the 2012 budget. It may also be due, in part, to reorganization and consolidation of programs that may have resulted in some funding shifts between programs.

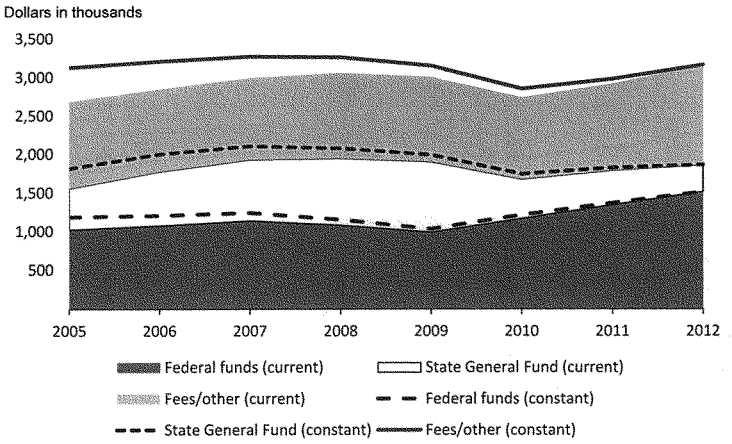
Figure 33: Vermont's Total Nonpoint Source Program Funding by Source in Current and Constant Dollars, Fiscal Year 2005 through Fiscal Year 2012



Source: GAO analysis of Vermont's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Vermont's fiscal year (July through June). Vermont was able to report 8 years of data from fiscal year 2005 through fiscal year 2012. Records for years prior to 2005 are unavailable because they were damaged in flooding from Hurricane Irene.

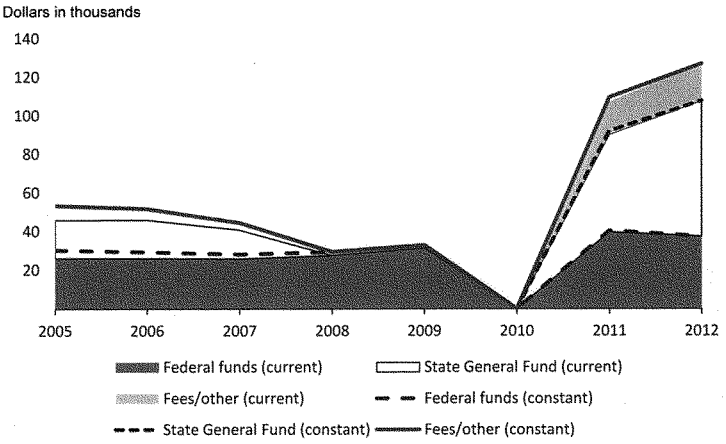
Figure 34: Vermont's Total Air Quality Program Funding by Source in Current and Constant Dollars, Fiscal Year 2005 through Fiscal Year 2012



Source: GAO analysis of Vermont's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Vermont's fiscal year (July through June) Vermont was able to report 8 years of data from fiscal year 2005 through fiscal year 2012. Records for years prior to 2005 are unavailable because they were damaged in flooding from Hurricane Irene.

Figure 35: Vermont's Total Underground Injection Control Program Funding by Source in Current and Constant Dollars, Fiscal Year 2005 through Fiscal Year 2012



Source: GAO analysis of Vermont's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using Vermont's fiscal year (July through June). Vermont was able to report 8 years of data from fiscal year 2005 through fiscal year 2012. Records for years prior to 2005 are unavailable because they were damaged in flooding from Hurricane Irene. According to Vermont officials, federal funding for Vermont's Underground Injection Control program was zeroed out in fiscal year 2010.

As the Vermont Department of Environmental Conservation's budget has changed, department officials said that staffing levels have been reduced by about 17 percent in recent years. The reductions in staffing have generally been achieved through attrition, but the department has also implemented furloughs, salary cuts, and hiring freezes. The department is working to institute a business transformation process aimed at streamlining programs, and making operations more efficient. As a result of reduced funding and fewer staff, the water quality, air, and other programs supported by the four EPA grants have revised their approach to their workload. Department officials reported that the programs have focused on meeting regulatory requirements, while nonregulatory programs, such as education and outreach, have been reduced or eliminated completely.

With reduced staff and funding, the department has developed backlogs in permit renewals and is facing difficulties meeting federal requirements for EPA grants, according to officials. For example, according to Air Pollution Control Division officials, due to reduced staffing levels, the program has had to put an emphasis on granting air quality permits for construction of new facilities at the expense of renewals of existing air quality permits. Specifically, officials told us there is a 60 percent backlog in permit renewals, and program officials project that the average period to renew air quality permits is 7 to 8 years instead of the normal 5 years. Air Pollution Division officials are considering self-certification for some of their permits to reduce the workload of inspection and enforcement staff. In addition, department officials stated that regulatory requirements continue to increase, resulting in increased workloads. For example, Air Pollution Control Division officials told us decreases in funding and staffing have been especially difficult to absorb due to increased federal requirements, such as those related to reducing mobile source diesel emissions, without a commensurate increase in federal grant funding. Officials in the Water Quality and Air Pollution Control Divisions told us they had to appeal to EPA regional officials to get a waiver to extend the fulfillment of some EPA grant requirements to the next grant cycle.

West Virginia

The West Virginia Department of Environmental Protection's mission is to protect the environment while leaving room for a sustainable industry base. The department houses a number of divisions, including divisions managing air, land, water, and waste, as well as an oil and gas drilling regulatory division.

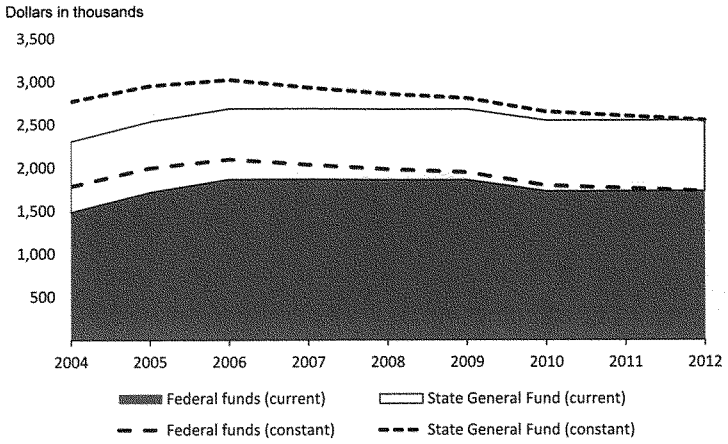
West Virginia's expenditures for the programs supported by the EPA grants we reviewed varied from fiscal year 2004 through fiscal year 2012. A discussion of the state's expenditures of federal and state funds follows.

Federal funds: From fiscal year 2004 through fiscal year 2012, state expenditures from federal funds for the state's Water Quality, Nonpoint Source, and Air Quality programs have fluctuated and decreased (see fig. 36, fig. 37 and fig. 38).[23] State expenditures from federal funding for the Underground Injection Control program decreased from fiscal year 2004 through fiscal year 2006 and then decreased more gradually through fiscal year 2012 (see fig. 39).

State funds: From fiscal year 2004 through fiscal year 2012, West Virginia's expenditures for the state's Air Quality, Water Quality, and Nonpoint Source programs have fluctuated and decreased over the 9–year period (see fig. 36, fig. 37, and fig. 38). State expenditures for the Underground Injection Control program gradually decreased and leveled off from fiscal year 2004 through fiscal year 2012 (see fig. 39). The state uses a mix of approaches to fund its programs. The state's Nonpoint Source and Air Quality programs are funded primarily through fees, while the state's Water Quality program and Underground Injection Control program are funded at the state level primarily through the General Fund.

[23]All state dollars are presented in current and constant dollars. Where noted, dollars have been adjusted to constant fiscal year 2012 dollars using West Virginia's fiscal year (July to June).

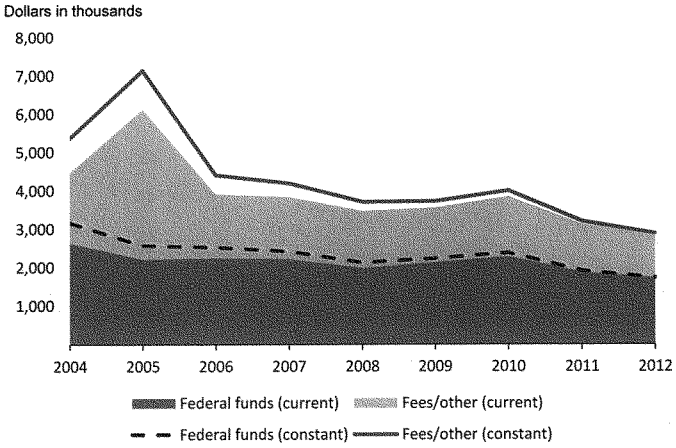
Figure 36: West Virginia's Total Water Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of West Virginia's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using West Virginia's grant year (October to September). West Virginia was able to report 9 years of data from fiscal year 2004 to fiscal year 2012.

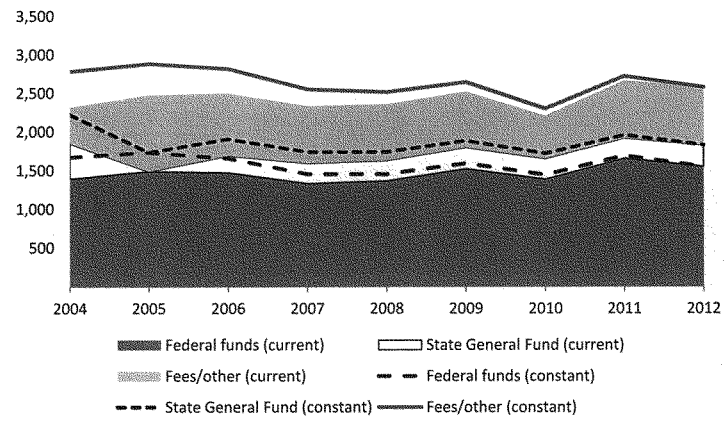
Figure 37: West Virginia's Total Nonpoint Source Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of West Virginia's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using West Virginia's grant year (October to September). West Virginia was able to report 9 years of data from fiscal year 2004 to fiscal year 2012. According to officials, increases in fiscal year 2005 and fiscal year 2011 were due in part to shifting of resources within the department.

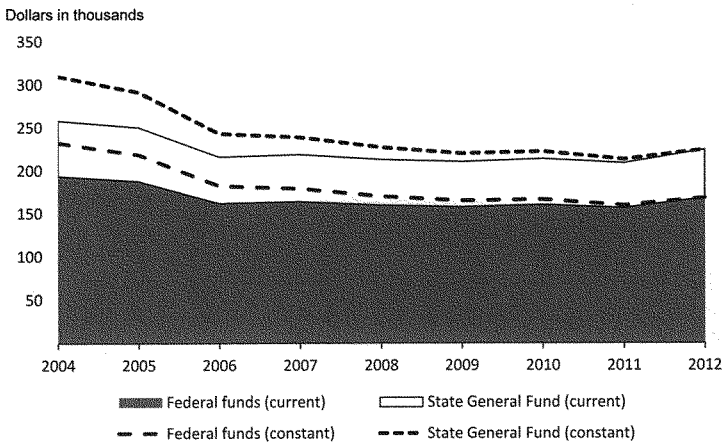
Figure 38: West Virginia's Total Air Quality Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of West Virginia's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using West Virginia's grant year (October to September). West Virginia was able to report 9 years of data from fiscal year 2004 to fiscal year 2012.

Figure 39: West Virginia's Total Underground Injection Control Program Expenditures by Source in Current and Constant Dollars, Fiscal Year 2004 through Fiscal Year 2012



Source: GAO analysis of West Virginia's data.

Note: Constant dollars have been adjusted to fiscal year 2012 dollars using West Virginia's grant year (October to September). West Virginia was able to report 9 years of data from fiscal year 2004 to fiscal year 2012.

Officials said there have been relatively few effects on programs as budgets remained level or decreased. Officials from the state's Nonpoint Source program said that due to decreasing budgets, fewer program partners, and the overall condition of the economy, the program had a diminished ability to implement programs. At the same time, however, the officials also said they have reorganized to provide additional support for the program through a variety of funding sources, including other federal funds. Additionally, officials reported that some cutbacks were made to continue programs with reduced funding, including operating with staff vacancies and assigning additional duties to existing staff, limiting employee overtime and merit pay increases, and cooperating with other states to share planning resources. One official noted that while the department has been able to adjust to decreasing budgets, further decreases in federal funding would make it difficult for the department to carry out the responsibilities of the Air Quality grant.

Enclosure III: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

Key contributors to this report were Susan Iott, Assistant Director; Nathan Anderson; Cheryl Arvidson; Elizabeth Beardsley; Mark Braza; Jonathan Delicath; Joyce Evans; Micah McMillan; Mehrzad Nadji; Emily Norman; and Dan Royer.

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