



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

November 17, 1993

The Honorable John C. Martin  
Inspector General  
Environmental Protection Agency  
401 M Street, SW.  
Washington, DC 20460

Dear Mr. Martin:

As part of the Office of Government Ethics' agency monitoring activities, we have completed a review of the Environmental Protection Agency's ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended.

I have enclosed for your information a copy of our report. If you wish to discuss the report, please contact Dale Christopher of my staff at (202) 523-5757, extension 1130.

Sincerely,

Stephen D. Potts  
Director

Enclosure



United States  
**Office of Government Ethics**

1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

November 17, 1993

The Honorable Carol M. Browner  
Administrator  
Environmental Protection Agency  
401 M Street, SW.  
Washington, DC 20460

Dear Ms. Browner:

The Office of Government Ethics (OGE) has just completed its fourth review of the Environmental Protection Agency's (EPA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations.

Our review disclosed that EPA has many of the elements which are characteristic of a model ethics program, including its well-managed education and training program, as well as the effective counseling and advice services provided by EPA's ethics officials. The enclosed report to Mr. Yamada, the Designated Agency Ethics Official, highlights the results of our review and recommends the actions necessary to improve EPA's ethics program.

Mr. Yamada is requested to advise OGE, within 60 days, of the specific actions he has taken or plans to take concerning each of the recommendations in our report. A brief follow-up review will be scheduled six months from the date of this report to determine the status of our recommendations. I would be glad to meet with you to discuss your program. Please call me at (202) 523-5377, if I may be of assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen D. Potts".

Stephen D. Potts  
Director

Enclosure



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

November 17, 1993

Gerald H. Yamada  
Principal Deputy General Counsel  
Environmental Protection Agency  
401 M Street, SW.  
Washington, DC 20460

Dear Mr. Yamada:

The Office of Government Ethics has completed its fourth review of the Environmental Protection Agency's (EPA) ethics program. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations.

Our review disclosed that EPA has many of the elements which are characteristic of a model ethics program. Strong points of the ethics program include its well-managed education and training program, as well as the effective counseling and advice services provided by EPA's ethics officials. However, some improvements are needed in the area of confidential financial disclosure to strengthen the overall effectiveness and integrity of the ethics program. The enclosed report highlights the results of our review.

In closing, I would like to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the actions your agency has taken or plans to take concerning each of the recommendations in our report. A brief follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that EPA implement actions to correct these deficiencies in a timely manner. We are sending a copy of this report to the EPA Administrator and the Inspector General. If we may be of further assistance, please contact Dale Christopher at (202) 523-5757, extension 1130.

Sincerely

A handwritten signature in cursive script, reading "Stephen D. Potts".

Stephen D. Potts  
Director

Enclosure

REVIEW OF THE ETHICS PROGRAM  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOVEMBER 1993

PREPARED BY

U. S. OFFICE OF GOVERNMENT ETHICS  
OFFICE OF PROGRAM ASSISTANCE AND REVIEW

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Abbreviations

DAEO	Designated Agency Ethics Official
DEO	Deputy Ethics Official
EPA	Environmental Protection Agency
OGE	Office of Government Ethics
OIG	Office of the Inspector General
OMS	Office of Mobile Sources
SGE	Special Government Employee

## CHAPTER 1

### INTRODUCTION

The Environmental Protection Agency (EPA) is responsible for abating and controlling pollution in the areas of air, radiation, water, solid waste, pesticides, and toxic substances. Its mandate is to mount an integrated, coordinated attack on environmental pollution in cooperation with State and local governments. EPA endeavors to accomplish its mission through the proper integration of a variety of research, monitoring, standard setting, and enforcement activities.

EPA Headquarters is organized into 12 major offices: the Office of the Administrator (including its various staff offices), the 4 major program offices, and 7 offices performing various administrative, oversight and support functions (e.g., enforcement, research and development, etc.). EPA's four major programs, each mandated by statute, are administered by the Office of Air and Radiation; the Office of Prevention, Pesticides, and Toxic Substances; the Office of Solid Waste and Emergency Response; and the Office of Water (hereinafter referred to, respectively, as Air and Radiation; Pesticides; Solid Waste; and Water). Ten regional offices have the primary responsibility for implementing EPA program objectives nationwide.

EPA employs approximately 17,000 employees, 5,000 of whom are employed at Headquarters. The remaining 12,000 employees work in EPA regional offices and various laboratories throughout the United States.

#### Standards of Conduct Regulations

EPA's standards of conduct regulations are contained at 40 C.F.R. part 3 and are entitled "Employee Responsibilities and Conduct." Most of these regulations, however, have been superseded by the executive branch-wide standards of conduct at 5 C.F.R. part 2635.

#### Administration of the Ethics Program

EPA has an extremely decentralized ethics program. The Acting General Counsel is the Designated Agency Ethics Official (DAEO) and is ultimately responsible for the overall administration of the ethics program. Within the General Counsel's office, the DAEO is assisted by the Alternate DAEO, an attorney-advisor, a paralegal specialist, and several other attorney-advisors who perform part-time ethics duties. In addition, there are approximately 95 Deputy Ethics Officials (DEO) EPA-wide who perform certain ethics duties within their respective offices.

Officials designated as DEOs include the Assistant Administrators, Office Directors reporting to Assistant Administrators, Staff Chiefs reporting to the Administrator, the

Inspector General, and Laboratory Directors. At the regional office level, Regional Administrators and Regional Counsels are the designated DEOs. DEOs may also designate other staff members as necessary to support the ethics program. The duties of the DEOs include providing counseling and advice services to EPA employees; reviewing and maintaining confidential financial disclosure reports; approving employees' outside activity requests; and consulting, as necessary, with the DAEO and the Alternate DAEO.

The Office of the Inspector General (OIG) at EPA Headquarters maintains continuous contact with EPA ethics officials. The OIG provides the DAEO and Alternate DAEO with copies of all investigation reports on employee disciplinary action cases and also informally consults with the DAEO and Alternate DAEO as necessary. Ethics officials at the Dallas and Denver Regional Offices coordinate regularly with the Regional OIG on cases of employee misconduct. Allegations of employee misconduct may be referred initially to either the DEO or the Assistant Regional Inspector General for Investigations. The offices then coordinate with each other, as necessary, to resolve the case. The New York and Philadelphia Regional Offices have had little contact with the Regional OIGs, owing to the fact that actual criminal violations of the conflict-of-interest statutes rarely, if ever, arise. Effective coordination, however, does occur when the need arises.

#### Prior OGE Reports

This is the fourth review of EPA's ethics program. The three previous reviews were conducted in 1982, 1985, and 1989. The 1982 report recommended that the monitoring of ethics programs in the regional offices be improved. It also recommended improvements in the areas of financial disclosure and ethics training. The 1985 report again recommended that the monitoring of ethics programs, both at the regional offices and Headquarters, be improved. The results of the 1989 review showed significant improvement in the administration of EPA's ethics program as a whole. However, the report recommended some areas which still were in need of improvement, including: the education of the DEOs and other EPA employees; financial disclosure; and the monitoring of the ethics program nationally. Our current review disclosed that the monitoring of the confidential financial disclosure system continues to be an area in need of improvement (see ch. 3).

#### Objectives, Scope and Methodology

We performed this review pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to evaluate the ethics program's effectiveness and compliance with applicable ethics laws and regulations. Our review was conducted at EPA Headquarters in Washington, DC, where the primary focus was on the four major programs: Air and Radiation, Pesticides, Solid Waste, and Water; and at four EPA regional offices: Dallas,

Denver, New York, and Philadelphia. To achieve our objectives, we examined the following program elements:

- overall program administration,
- public financial disclosure,
- confidential financial disclosure,
- ethics education and training,
- ethics counseling and advice,
- outside activities, and
- relationship with the on-site OIG.

We performed the field work intermittently from May 1993 through September 1993 at EPA Headquarters in Washington, DC, and the four regional offices.

## CHAPTER 2

### PUBLIC FINANCIAL DISCLOSURE SYSTEM

EPA has an effective public financial disclosure system. The public financial disclosure reports were generally submitted in a timely manner; however, improvements are needed in the timeliness of the review of the reports.

The public financial disclosure system is centralized at EPA Headquarters and is administered within the DAEO's office. The Alternate DAEO is responsible for managing the system, including collecting public reports, answering filer questions, performing the initial reviews, and maintaining the reports. The DAEO is responsible for conducting the final review and certification of the public reports.

Over 300 employees were required to file public financial disclosure reports during the 1992 filing cycle. We examined 60 of these reports which included 1 termination, 3 new entrant, and 56 incumbent reports. We found that seven reports (12 percent) were submitted in an untimely manner. In addition, we found that approximately 59 reports (98 percent) were not reviewed within 60 days of filing. The DAEO acknowledged the late reviews of the public reports, although he did perform a superficial review of reports as they were submitted. He attributed the delay to a very busy period and stated that he will attempt to provide more timely reviews during the 1993 filing cycle.

The public financial disclosure reports were generally complete and accurate, but we found several technical deficiencies. The technical deficiencies included incomplete information on assets or income sources. We found no substantive deficiencies.

## CHAPTER 3

### CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

During the 1992 filing cycle, EPA, like other executive branch agencies, implemented for the first time the requirements of subpart I of 5 C.F.R. part 2634 using the new confidential reporting form (SF 450). Considering the increased number of filers involved, EPA did an exceptional job in collecting and reviewing reports and in resolving any actual or potential conflicts of interest.

As with any new system, however, some refinements are necessary. With respect to the administration of the confidential financial disclosure system, the DAEO should consider establishing at EPA Headquarters a greater coordination and oversight role at the major office level to enhance information gathering and monitoring of the system. The potential for excessive confidential disclosure coverage exists in some offices as well as deficiencies in identifying new entrant confidential filers. There is a need to ensure that DEOs and their designees are made fully aware of EPA's confidential reporting procedures so that they can perform their duties effectively, including certifying reports in a timely manner. Finally, a number of office and filer-specific substantive issues need to be addressed.

#### Confidential Financial Disclosure System is Highly Decentralized at Headquarters

EPA has a decentralized confidential financial disclosure system. Administration of the system, including identifying which employees should file confidential reports and collecting, reviewing, certifying, and maintaining the reports is the responsibility of the DEOs. DEOs are also responsible for providing annual certification statements to the DAEO which list the number of employees required to file financial disclosure reports, the number of reports actually filed, etc.

The responsibility for administering the system within each major office has actually been dispersed to DEOs within the sub-offices. Air and Radiation, for example, has DEOs administering the confidential system for each of its five sub-offices: the Assistant Administrator's immediate office and its four program offices. These DEOs operate autonomously and the immediate office's DEO, at the highest level of the organization, has no coordinating or oversight role with respect to the other four program office DEOs. In EPA's regional offices, the responsibility for administering the confidential financial disclosure system is divided, or shared depending on the regional office, between the Regional Administrator and the Regional Counsel.

We believe that the highly decentralized structure of the confidential system at EPA Headquarters impedes the effective flow of information to the DAEO's office to meet management needs. This was exemplified during the ethics program review by the difficulty encountered by the DAEO's staff in obtaining OGE-requested information from the various Headquarters' DEOs on confidential filers in their respective offices. Moreover, the current structure does not facilitate the reporting of common problems experienced in managing the major offices' systems to the DAEO's office (annual certification statements do not include such information). We found numerous technical deficiencies during our examination of Headquarters' confidential reports (see below), but in the absence of a single coordinating point in the major offices, this information has not been effectively communicated to the DAEO's office. This suggests the need for greater coordination and oversight, at a minimum at the Assistant Administrators' immediate office level, to facilitate the gathering of information to meet management needs and to monitor the implementation of the confidential financial disclosure system.

#### Improvements Needed in Filer Identification Procedures

Although procedures for identifying employees required to file confidential reports vary, the general approach used EPA-wide is to assign primary responsibility to division directors, in consultation with the appropriate ethics or personnel office staff. For the 1992 filing cycle, several DEOs informed us that their offices erred on the side of caution and required virtually all employees except clerical staff to file confidential reports, thereby significantly increasing the number of confidential filers in these offices. Although easy to administer, we believe that use of such stringent criteria can result in excessive coverage for confidential financial disclosure and create an undue burden on reviewers of confidential reports. Affected ethics officials may want to consider reassessing the number of employees required to file confidential reports for future filing cycles.

By contrast, the Office of the Associate Administrator for Congressional and Legislative Affairs, which reports directly to the EPA Administrator, did not identify any employees which met the filing criteria of 5 C.F.R. § 2634.905. This office, therefore, had no confidential filers during the 1992 filing cycle. After discussions with the OGE review team and the Alternate DAEO, however, the DEO of this office stated that certain employees will be identified and required to file confidential reports during future filing cycles.

## Improvements Needed in the Collection of New Entrant Reports

We found that several offices need to improve procedures for collecting new entrant confidential reports. The Dallas Regional Office does not have a system in place to collect in a timely manner new entrant reports from employees entering into covered positions. This may be attributed in part to the fact that this office, unlike the other regional offices visited, does not involve its personnel office in this process. Although several Headquarters' DEOs stated that new employees in their offices are given confidential forms as a part of their orientation packet, procedures for following up to ensure that reports are actually filed appear lax. According to the DAEO, EPA has historically experienced problems with timely collection of new entrants' reports.

## Standard Procedures Developed for the Confidential Financial Disclosure System

EPA Ethics Advisory 92-21, "Standard Procedures for SF 450, Confidential Financial Disclosure Report," covers procedures for collecting, reviewing, and maintaining confidential reports. Pursuant to these procedures, DEOs are responsible for notifying covered employees of the confidential filing requirements and following up on late reports as necessary. Completed reports are returned to the DEOs for review and certification.

EPA procedures allow the DEOs to designate, in writing, additional staff to assist in the review of confidential reports. We noted variations among offices relating to the intermediate review of reports. Some offices do not perform intermediate reviews at all, while those that do vary in terms of whether ethics officials or the filers' immediate supervisors perform the reviews. Some ethics officials were unaware that supervisors can be used as intermediate reviewers of confidential reports. In offices using supervisors as intermediate reviewers, ethics officials stressed the belief that supervisors are in the best position to assess potential conflicts of interest relating to subordinates' duties. In contrast, ethics officials in other offices cited significant privacy concerns and sensitivities relating to immediate supervisors being made aware of subordinates' financial holdings.

A total of 4,914 confidential reports were filed Headquarters-wide during the 1992 filing cycle. The total for the Dallas, Denver, New York, and Philadelphia Regional Offices was 2,593 reports. We reviewed a sample of 541 Headquarters' reports (excluding filers of the Science Advisory Board and other advisory committees) and a sample of 407 regional office reports. The Headquarters' sample included 461 incumbents, 31 new entrants, and 3 special Government employees (SGE). The remaining 46 reports consisted of 11 reports with no reporting status indicated and

35 reports which, though marked "new entrant," had dates of appointment which suggested they may be incumbent reports. The regional offices' sample included 314 incumbents, 55 new entrants, 30 reports with no reporting status indicated, and 8 similarly questionable "new entrant" reports.

With respect to the 43 questionable "new entrant" reports, Headquarters and regional office ethics officials stated that the reports represented filers who were either actual new entrants added by application of the new filing criteria or incumbent filers who thought they were new entrants due to the first-time use of the new SF 450. They do not believe that either problem will be repeated during the next filing cycle.

Due to delays in obtaining the new SF 450, the DAEO extended the deadline for submitting confidential reports to January 29, 1993. In view of this extension and the required 60-day review period, the DAEO also extended the deadline for submission of the DEOs' annual certification statements, which were originally due by December 31, to March 30, 1993.

At the Headquarters' level, 109 confidential reports (20 percent) were submitted late and 78 reports (14 percent) appeared to be reviewed late. Of the confidential reports reviewed at the four regional offices, only 12 reports (3 percent) were submitted late and 34 reports (8 percent) appeared to be reviewed late. Considering the significant increase in confidential filers for the 1992 filing cycle, and the fact that this was EPA's first-time use of the SF 450, we do not believe these statistics represent any systemic problems.

#### Numerous Technical Deficiencies Noted

Our examination of the confidential reports revealed numerous technical deficiencies. Although most of the deficiencies related to the completeness of entries, others were more serious: most notably the failure of Headquarters' DEOs to certify reports pursuant to 5 C.F.R. § 2634.605(b)(2). Fifty-nine (11 percent) of Headquarters' reports had not been certified at the time of our examination (only four (1 percent) of the regional offices' reports had not been certified). Ten of the uncertified reports had only recently undergone initial reviews at the time of our examination. For 26 reports, however, a range of from 3 to 7 months had elapsed since initial reviews were conducted. The remaining 27 uncertified reports had no indication of initial reviews.

We believe that many of the technical deficiencies noted can be attributed in part to ethics officials' unfamiliarity with EPA Ethics Advisory 92-21. During our examination, several DEOs, or their designees, raised questions on certain aspects of the confidential financial disclosure system which indicated a lack of

adequate knowledge of the standard procedures discussed in this Advisory. For example, although EPA procedures describe in detail the process for reviewing and certifying confidential reports, several ethics officials expressed confusion in this area. Other questions raised by these ethics officials regarding the maintenance of reports, as well as their failure to consistently use the "Date Received by Agency" block of the SF 450, also demonstrate the officials' lack of knowledge of EPA confidential reporting procedures.

Collection and Review of SGE Advisory Committee  
Member Reports are Adequate

EPA makes extensive use of SGEs and advisory committees to ensure that it obtains the expertise necessary to fully execute statutory mandates. We selected samples of confidential reports filed by SGE members of three EPA advisory committees: the Biotechnology Science Advisory Committee, the National Drinking Water Advisory Council, and the Science Advisory Board. The sample included 41 of the total 270 reports filed.

Pursuant to an OGE memorandum to DAEOs dated October 19, 1992, SGEs are exempt from the annual incumbent reporting requirement of 5 C.F.R. § 2634.903(a). They must, however, file new entrant reports at the time of their initial one-year appointment and thereafter additional new entrant reports under § 2634.903(b) as they are reappointed or redesignated to serve beyond their initial one-year appointments. Term employees who serve as SGEs for a fixed term exceeding one year are to file additional new entrant reports each year throughout their term of service upon the anniversary of their initial appointment, even though they are not formally reappointed or redesignated. Our examination of the confidential reports revealed that 29 (71 percent) of the SGE filers indicated an incumbent reporting status. DEOs need to be made aware that SGEs are subject to only new entrant reporting requirements as discussed in the OGE memorandum.

Four reports, and possibly more, were submitted late, but we could not make a definitive determination in several cases due to the inability to discern appointment or reappointment dates. Only one report appeared to be reviewed late. We found 24 minor technical deficiencies and 9 reports which had not been certified at the time of our examination. Although these nine reports had been initially reviewed by the DEO, we could not ascertain the lapse of time from the initial review because the reports were not signed and dated in this regard.

Due to the critical need for advisory committee SGEs and the fact that their services are often required by statute, they are sometimes granted waivers under 18 U.S.C. § 208(b)(3). We examined selected waivers issued by the DAEO's office and found them to be in compliance with § 208(b)(3).

Office and Filer-specific Substantive  
Issues Need to be Addressed

Our examination of the confidential reports disclosed the use of both cautionary memorandums and recusals as means of avoiding potential conflicts of interest. We found that cautionary memorandums issued by the Denver Regional Office are too generalized to adequately ensure filer compliance. Filers who report questionable holdings are told by memorandum that, "...you [sic], your spouse's, or your dependent children's financial interest...presents the potential for a conflict of interest...." The memorandum further advises the filer on the possible need for a recusal from involvement in any matter which could affect one of the aforementioned financial interests. However, the actual holding which presents the potential conflict is not identified in the memorandum. The burden is thus upon filers to ensure that they do not become involved in a matter which may present a conflict of interest. We believe that greater specificity is required from ethics officials relating to the financial interest which poses the potential conflict of interest.

Use of recusals was most prevalent in Solid Waste and Pesticides and in the Dallas and Denver Regional Offices. We examined selected recusals and found them to be in compliance with applicable laws and regulations.

We also noted one filer-specific substantive issue during our examination which raised conflict-of-interest questions. A filer in the Air and Radiation Program's Office of Mobile Sources (OMS) reported in August 1991 spousal stock holdings in General Motors. Since a potential conflict of interest arises when an OMS employee has financial interests in the automobile industry, the filer requested the DAEO's office to pursue a certificate of divestiture with OGE. However, a notation on the filer's 1992 report indicated she was never told to sell the stock. Follow-up on this matter with the Alternate DAEO and an OMS ethics official revealed it has not been resolved. Although a certificate of divestiture is still being considered by OMS, an alternative resolution is to require a recusal by the employee.

## CHAPTER 4

### ETHICS EDUCATION AND TRAINING

EPA completed the initial ethics orientation as required by 5 C.F.R. § 2638.703(a) and was in the process of complying with the annual training requirements at 5 C.F.R. § 2638.704. Ethics education and training programs at both Headquarters and the regional offices appear to be well-managed and effectively administered.

#### Initial Ethics Orientation Requirement has been Satisfied

On November 9, 1992, the DAEO sent a memorandum to the DEOs and all other EPA employees notifying them of the initial ethics orientation requirements. The memorandum outlined the materials each employee was to receive, including: a copy of part I of Executive Order 12674, as amended; a copy of the executive branch-wide standards of conduct; the names, titles, office addresses, and phone numbers of the DAEO and other agency ethics officials; and a brief discussion of the procurement integrity provisions at 41 U.S.C. § 423. Employees were also informed that they were to receive at least one hour of official duty time to review these materials. Regional office DEOs were also informed of the initial orientation requirements and have completed the orientations at each of their respective regional offices. All new employees are provided with the initial ethics orientation materials as part of their entry-on-duty package, in compliance with the initial ethics orientation requirements at 5 C.F.R. § 2638.703(b).

#### Annual Ethics Training is Under Way

EPA was in the process of complying with the annual training requirements. Solid Waste had nearly completed its annual ethics training at the time of our review and many of the other Headquarters' offices were in the process of conducting the annual training courses. The remaining Headquarters' offices had training courses scheduled to begin in the near future. Several of these offices were awaiting the OGE training videotape to use as part of their course material. Air and Radiation's OMS planned to use the training videotape to complete the annual training at one of its laboratories in Ann Arbor, Michigan. However, ethics officials stated that a qualified individual may not be present during the showing of the videotape. Overall, Headquarters' ethics officials stated that they foresaw no problem in complying with the annual training requirements by the end of the calendar year.

Ethics officials at the Denver Regional Office had completed three of their five scheduled annual training courses. The remaining regional offices visited had not begun their annual

training at the time of our review. However, each office had courses scheduled for the upcoming months. As with the Headquarters' offices, the regional offices were confident that they would meet the annual training requirements.

## CHAPTER 5

### ETHICS COUNSELING AND ADVICE SERVICES

EPA Headquarters and the regional offices are providing effective counseling and advice services. Although the OIG has expressed concerns with oral advice provided by the DAEO's office, we believe that current efforts by the Alternate DAEO to keep notes of advice rendered are sufficient.

#### DEOs Providing Effective Counseling and Advice Services

While written determinations on ethics advice rendered are maintained in the DAEO's office, the DEOs informed us that most of the counseling and advice which they render is oral, except for approvals to engage in outside employment. Although the individual DEOs are responsible for providing counseling at their respective offices, the Alternate DAEO issues EPA-wide guidance on ethics-related matters when warranted. We examined available written determinations and found them to be consistent with applicable laws and regulations.

Pursuant to 40 C.F.R. § 3.508 (to be implemented by EPA regulations supplementing 5 C.F.R. part 2635), employees must obtain administrative approval before engaging in certain types of outside employment or activities. Appendix A to subpart E of 40 C.F.R. part 3 outlines the procedures employees are to follow when requesting permission to engage in such activities. We examined all requests to engage in outside employment and activities, and the subsequent approvals/disapprovals from the DEOs, from 1992 to the present and found the process to be in compliance with the procedures set forth in Appendix A.

#### OIG Concerned with Oral Advice Provided by DAEO's Office

EPA's Inspector General informed us that his office has had problems in the past with oral advice provided to employees by the DAEO's office. Specifically, the OIG has often encountered difficulties prosecuting cases involving defendants who claim that they relied on oral advice received from EPA ethics officials and that officials were well aware of their actions (i.e., defendant actions were not secretive or subversive). When called upon to testify in these cases, the ethics officials who provided the advice usually have trouble recalling the details of either the request or the advice rendered. This makes a "good faith" determination relating to the defendant's reliance on the ethics advice difficult under 5 C.F.R. § 2635.107(b).

According to the Deputy Inspector General, this issue has been the subject of an ongoing debate between the OIG and the DAEO's

office. Several OIG investigations were cited where the lack of a formalized procedure for recording advice given by EPA ethics officials has adversely impacted upon the investigations. Although the Alternate DAEO has agreed to keep notes on advice rendered, the OIG believes that more formal procedures are necessary for both the advice rendered as well as for the advice requested.

While some form of documentation (e.g., an ongoing log) is desirable, we do not believe that a requirement to provide all ethics advice to employees in writing is practicable. OGE has rejected previous recommendations to do so and, in the absence of a statutory requirement, continues to believe that the decision on whether or not to reduce ethics advice to writing should be at the agency ethics officials' or IG's discretion. The fact is that employee daily requests for ethics advice can be sizeable. The workload burden created by a stringent documentation requirement, in our opinion, would significantly outweigh the resulting benefits.

## CHAPTER 6

### ACCEPTANCE OF TRAVEL FROM NON-FEDERAL SOURCES

Section 1353 of 31 U.S.C. authorizes executive branch agencies to accept travel, subsistence, and related expenses from non-Federal sources in connection with an employee's attendance at certain meetings and similar functions related to official duties. This authority has been implemented by the General Services Administration's Interim Rule 4 at 41 C.F.R. part 304-1, which became effective December 9, 1992.

EPA updated its written procedures (EPA Ethics Advisory 92-26) implementing this regulation on December 24, 1992, to reflect the changes established by this most recent Interim Rule. The two major areas that have been amended with the issuance of Interim Rule 4 are § 304-1.2(c)(3) dealing with the definition of a "meeting or similar function" and § 304-1.5(a) regarding the "conflict-of-interest analysis." According to the Alternate DAEO, EPA often performs functions, such as technical assistance, which may fall into a gray area with regard to the definition of a meeting or similar function. He believes that Interim Rule 4's definition of a meeting or similar function could use some clarification. In addition, although Interim Rule 4 no longer speaks of a "conflicting non-Federal source," approving officials generally use the same criteria as they had under the previous rules to determine if the agency can accept the payment.

All employee requests to accept payments on behalf of EPA, both at Headquarters and at the regional offices, must be approved at Headquarters by one of the several approving officials designated in Ethics Advisory 92-26. An employee requesting approval to accept a payment is required to complete the standard form (Approval to Accept Travel Under the Ethics Reform Act of 1989) and return it to a designated approving official.

During the most recent six-month period from October 1, 1992, to March 31, 1993, for which EPA was required to report semiannually to OGE payments which total more than \$250 per event, EPA accepted 623 payments from non-Federal sources under 31 U.S.C. § 1353. We examined 60 of these payments and found them to be in compliance with the requirements of Interim Rule 4.

## CHAPTER 7

### CONCLUSIONS AND RECOMMENDATIONS

#### Conclusions

EPA has developed the foundation for an effective ethics program. With the exception of the confidential financial disclosure system, all elements of the program are generally functioning effectively.

Although EPA's implementation of the new executive branch-wide confidential financial disclosure system has been commendable, some improvements are necessary for the future. The administration of the system could be improved by establishing greater control at the Headquarters' major office level to enhance information gathering and monitoring of the system. The potential for excessive coverage of employees and deficiencies in meeting the new entrant filing requirement also need to be addressed. Efforts need to be made to ensure that ethics officials responsible for the collection, review, certification, and maintenance of confidential reports are made fully aware of EPA standardized procedures in these areas. Finally, several substantive issues relating to specific offices and filers need to be resolved.

#### Recommendations

To enhance the effectiveness of EPA's ethics program, we recommend that you:

1. Consider establishing greater coordination and oversight at the Headquarters' major office level to enhance the gathering of information from and monitoring of the confidential financial disclosure system.
2. Ensure that DEOs reassess for future filing cycles the number of employees who are identified as confidential filers pursuant to 5 C.F.R. § 2634.904. Emphasis should be placed on determining whether the current coverage of the system is excessive.
3. Ensure that new entrant confidential reports are collected in accordance with 5 C.F.R. § 2634.903(b).
4. Ensure that confidential reports are certified pursuant to 5 C.F.R. § 2634.605(b)(2).

5. Ensure that responsible ethics officials, whether DEOs or their designees, are made fully aware of EPA standardized procedures governing the collection, review, certification, and maintenance of confidential reports.
6. Direct the Denver Regional Office's DEO to ensure greater specificity in cautionary memorandums and recusals to inform filers of the particular financial interests which pose the potential conflicts of interest.
7. Follow through and resolve the case of the Office of Mobile Sources' filer with financial interests in the automobile industry. A determination should be made as to whether a certificate of divestiture or some other type of ethics agreement is warranted to resolve the issue.