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THE WHITE HOUSE

WASHINGTON

June 8, 1993

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: BERNARD W. NUSSBAUM BN
COUNSEL TO THE PRESIDENT

CHERYL MILLS
ASSOCIATE COUNSEL TO THE PRESIDENT

BETH NOLAN
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Reminder on Ethics Obligations and Gifts

The President is committed to ensuring that all employees adhere to the highest standards of integrity. As a White House employee, you are subject to the criminal conflict of interest laws, the Standards of Ethical Conduct for Executive Branch Employees, the Foreign Gifts Act, and a number of other restrictions, some of them with significant penalties. You should have received a copy of the Standards of Ethical Conduct when you attended your orientation ethics briefing. Additional copies of the Standards of Ethical Conduct are available in the Counsel's Office, OEOB Room 128. If you have not attended an Ethics briefing, please be sure that you attend the next regularly scheduled briefing, on Tuesday, June 29, 1993 at 4:00 p.m. in Room 450, OEOB. It is critical that every White House employee receive training in the ethical obligations that apply to those serving in the government.

This memorandum lays out the White House policy regulating the receipt of gifts, both domestic and foreign, under the Standards of Ethical Conduct for Executive Branch Employees and the Foreign Gift Act.

General Domestic Gift Principles

The principles discussed below apply to gifts offered to or received by you personally. You should be aware that there are only very limited circumstances in which a gift may be accepted for official purposes, or otherwise on behalf of the White House. **No gift** -- including, but not limited to, computer software or hardware, or other equipment, whether by outright gift or loan --

should be accepted for official use without first checking with the Counsel's Office. Normally, acceptance of such gifts will not be permissible. Although it is often frustrating to deal with outmoded or inadequate equipment, the solution is NOT for White House staff individually to solicit or accept gifts or loans of such equipment from private sources. Moreover, it also is improper to solicit or accept such equipment personally and then use it for official business. It is very important that you understand and comply with this restriction on soliciting and accepting gifts for official purposes.

Gifts that are offered to or received by you personally are also subject to a number of limitations, which are set forth in the Standards of Ethical Conduct. These limits are discussed below, but you should refer to the Standards of Ethical Conduct themselves if any questions arise about a gift.

Under the Standards of Ethical Conduct, executive branch employees may not accept a gift in return for being influenced in the performance of an official act nor may he or she <u>solicit or coerce the offering of any gift</u>.

Moreover, White House employees may not solicit or accept a gift:

1. from a prohibited source; or

2. given because of the employee's official position.

I. <u>What Constitutes a "Gift"</u>

Virtually anything of value constitutes a gift, whether it comes in the form of an outright donation, loan, favor, discount, travel, lodging, entertainment, or other hospitality. This includes, for example, meals, flowers, tickets to events, or loans of software or equipment. When in doubt, it is best to assume that anything of value is a gift. As discussed below, however, some exceptions permit you to accept certain gifts.

II. <u>What Constitutes a "Prohibited Source"</u>

A prohibited source includes anyone who:

1. is seeking official action by the White House;

2. does business or seeks to do business with the White House;

3. conducts activities regulated by the White House;

4. has interests that may be substantially affected by the performance or nonperformance of your official duties; or

5. is an organization composed of members who can be described by the criteria set forth immediately above.

Thus, under the Standards of Ethical Conduct, White House staff members generally are prohibited from accepting gifts (including meals, evaluative computer hardware and software, tickets to events) from most sources -- including, among others, contractors, the press, corporations, regulated business groups, and litigating parties.

III. Gifts That May Be Accepted

The Standards of Ethical Conduct provide limited exceptions under which certain gifts from prohibited sources or gifts given because of a staff member's official position properly may be accepted. These exceptions are very limited; gifts that fall outside of the exceptions cannot be accepted consistent with the Standards of Ethical Conduct.

In addition to the exceptions, you always may choose to pay the regular price for an item -- the face value of a ticket, the market price of a book, etc., -- if you wish to keep an item that you are not permitted to accept as a gift. Moreover, under certain circumstances, travel on official business may be paid for by outside sources. However, you must seek approval for such travel expenses prior to traveling.

In all instances, however, **employees may not solicit or coerce the offering of a gift** -- even if the gift could be accepted under one of the excepted categories in the Standards of Ethical Conduct.

The following categories of gifts may be accepted consistent with the Standards of Ethical Conduct:

A. Gifts of $20 or Less. You may accept an unsolicited gift (other than cash or its equivalent) that is valued at $20 or less per occasion. This category applies to all goods as well as dinners and receptions. See Memorandum for White House Staff, "Meals, Receptions, Dinners, and Events" (March 1, 1993). Although, you may accept a meal, book, or other item valued at $20 or less, you may not keep a gift valued over $20 by paying the difference between the gift's market value and the $20 limitation. Moreover, you may not accept more than an aggregate amount of $50 in gifts under this exception from any single source in a calendar year.

Unsolicited advertising and promotional materials of nominal value may be accepted even if they come from individuals or businesses having business with your office or regulated by your office or some other agency of the government. This extends only to such customary items as desk calendars, pens, pocket diaries, and the like. By way of example, this rule would not permit the acceptance of a case of champagne, a work of art, evaluative computer software or hardware equipment, or other items of substantial value.

B. Gift Based on a Personal Relationship. You may accept an unsolicited gift where it is clear that the gift is motivated by a family relationship or close personal friendship rather than your official position. In assessing whether a gift meets this exception, the history of your relationship (does it predate your government service?) and the source of payment (did the individual or a company or business pay?) are important factors.

C. Gifts Based on Outside Business or Employment Relationships. You may accept meals, lodging, transportation and other benefits that results from the business or employment relationships of a spouse, provided it is clear that the gift has not been enhanced because of your official status. Thus, you may attend the opera with your spouse (or significant other) even when his or her employer provides him or her with tickets to attend.

You also may accept such gifts that result from your own outside business or employment activities provided it is clear that such gifts also have not been offered or enhanced because of your official position. Note, however, that all full-time White House officials paid above $27,789 are prohibited from receiving income from any outside employment activities. Moreover, outside business activities, even if otherwise permissible, should be cleared through Counsel's Office to ensure that no conflicts of interest are created by the activity.

D. Employment-Related Speaking Engagements. When you are speaking or presenting information on behalf of the White House in your official capacity, you may accept meals and the offer of free attendance at a conference, meeting or event on the day of your speech or presentation when provided by the sponsor of the event.

When travel expenses will be covered by a nongovernmental organization, you must receive approval by completing and submitting a non-federal source travel form to the Counsel's Office. These forms are available in the Administrative Office (OEOB, Room 1).

E. Widely Attended Gatherings. You may accept free attendance and meals offered by the sponsor of a widely attended gathering of mutual interest to a number of parties, provided your department head has determined it is in the interest of the White House that you attend. However, you may not attend an event or dinner as the guest of an organization other than the sponsor of the entire event; that is, the ticket must be offered and paid for by the host of the event. You should consult Counsel's Office to ensure that an event properly meets the "widely attended gathering" exception.

F. Gifts from a Political Organization. Those White House officials who are exempt from the Hatch Act (which includes staff members paid from appropriated funds for the White House Office) may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided by a political organization defined under 26 U.S.C. 527(e) (e.g., the Democratic National Committee or campaign committees for state, local and federal candidates).

G. Social Invitations from Non-Prohibited Sources. You may accept food and entertainment at a social event attended by several persons when the host is not a prohibited source and no fee is charged to anyone in attendance.

H. Awards and Honorary Degrees. You may accept a gift, other than cash or an investment interest, with an aggregate market value of $200 or less if it is a bona fide award or is offered incident to a bona fide award that is given for meritorious public service or achievement by a person (or organization) who does not have interests that may be substantially affected by the performance or nonperformance of your official duties.

A few other exceptions also apply for certain discounts and for meals and entertainment in foreign areas. You should consult the Standards of Ethical Conduct for specific guidance.

Assuming that the gift you would like to accept does meet one of the above exceptions, you always should consider whether your acceptance of the gift nevertheless would lead a reasonable person to question your impartiality in official matters affecting the donor. Where such an appearance question could be raised, you should decline to accept the gift.

General Foreign Gift Principles

I. Gifts From Foreign Governments

The United States Constitution and the Foreign Gifts Act, 5 U.S.C. 7342, generally prohibit U.S. Government officials, their spouses and dependents from accepting foreign gifts or decorations. The following general guidelines apply to gifts from foreign governments and officials:

A. A U.S. official may not request or encourage an offer of a gift or decoration.

B. Gifts from foreign governments valued at $200 or more automatically become the property of the U.S. Government. Such gifts may be accepted <u>on behalf of the United States</u> only when "it appears that to refuse . . . would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States . . . ." Because such gifts are "deemed to have been accepted on behalf of the United States," however, they must be turned over to the White House Gift Unit as soon as possible for recording, necessary reporting and disposition.

C. Gifts from foreign governments valued under $200 (termed gifts "of minimal value", which are "tendered and received as a souvenir or mark of courtesy" may be accepted and retained. Such gifts retained by you are subject to the annual public financial disclosure, discussed below, under the same conditions as domestic gifts.

D. Valuation of a gift is based on the retail value in the United States at the time of acceptance. 41 C.F.R. §101.49.001-5. A valuation of any gift should be sought immediately upon receipt (or upon your return from a foreign country). The gift should be submitted to the White House Gift Unit for valuation.

E. Under the General Services Administration's Interim Rule 4 (57 Fed. Reg. 53,283, November 9, 1992), federal employees may accept gifts of travel, meals and lodging from foreign governments and multinational organizations. Pursuant to 31 U.S.C. 1353 (travel by government officials paid for by non-federal sources), acceptance of any such gifts must be consistent with the conflict of interest rules outlined in Interim Rule 4. Such travel also must be approved by Counsel's Office and a thorough record of any such expenses accepted should be kept as they may be required to be reported to the State Department and on the annual financial disclosure form (discussed below).

F. In the case of travel taking place <u>entirely</u> outside of the United States -- <u>e.g.</u>, travel by a U.S. official between two foriegn countries -- the Foreign Gifts Act specifically requires that the value of travel or expenses paid by foreign governments for transportation, food or lodging must be reasonable and acceptance must be consistent with the interests of the United States.

II. Gifts from Foreign Non-Official Individuals

The Foreign Gifts Act applies only to official gifts from foreign governments and officials. We must caution you to be wary of gifts offered to you from foreign non-official individuals, especially when you do not know the donor. Any such gift is treated the same as a domestic gift in regard to propriety of acceptance, conflicts of interests, reporting, etc.

Reporting Requirements and the Gift Unit

I. White House Gift Unit and Report Forms

Members of the White House Office should complete a White House Staff Gift Report Form for all gifts, foreign and domestic. These forms may be obtained in reasonable quantities from the Supply Room or the White House Gift Unit, OEOB Room 457 (ext. 7133). The gift itself should be submitted to the Gift Unit for appraisal, together with the completed form.

Staff who are required to file annual financial disclosure reports should maintain a log of gifts valued in excess of $100. Gifts in excess of $250 from a single source must be disclosed on the annual SF-278 Public Financial Disclosure Report, aggregating gifts of $100 or more from one source.

II. Disposal of Prohibited Gifts

If you receive a gift that may not be accepted consistent with the Standards of Ethical Conduct, whether abroad, at the office, or at home, you must return it to the donor with the explanation that it cannot be accepted. A copy of the letter returning the gift should be retained for your files, with a copy attached to the White House Staff Gift Report Form that you send to the Gift Unit.

When it is not practical to return a tangible item because it is perishable, you may give the item to a charity, share it with your office or have it destroyed by the Gift Unit. A staff member still must report the gift (and the disposition) to the Gift Unit. Perishable items include flowers and food items.

If for some reason you feel you cannot return the gift (donor unknown, the address of donor unknown, embarrassment to the donor, or other), you should so indicate on the Gift Report Form, making sure to explain the rationale for not returning the item. If after analysis, the Gift Unit confirms that returning the gift is not possible or advisable, it will be turned over to GSA for disposal.

III. Reporting Requirements

In the event that a gift is retained, those staff members required to file financial disclosure reports on Form SF-278 are reminded that they have an obligation to report any gift over $250 in value received from persons other than relatives -- including any foreign gifts. In addition, foreign and domestic gifts over $100 in value must be reported if the aggregate of such gifts received from the same source in one year exceeds $250.

We recommend that you log all gifts received with the Gift Unit so that you can determine at reporting time whether there is a reporting requirement. The Gift Unit will assist you by determining the value of gifts. By routinely submitting the White House Staff Gift Report Forms to the Gift Unit throughout the year, you will enable the Gift Unit to supply you with an accurate and complete list of reportable gifts at the end of the year for inclusion on your SF-278 the following year.

Gifts for the President, First Lady, the Vice President and Mrs. Gore

Anyone who receives a gift intended for the President, the First Lady, the Vice President or Mrs. Gore, must ensure that it is turned over to security personnel for inspection as soon as possible. Please be particularly wary of gifts which are suddenly or unexpectedly thrust upon you. Upon return from security, the gift should be deposited with the White House (or Vice President) Gift Unit, along with information concerning the identity of the donor, time and place of acceptance, etc., so that the gift properly can be recorded and a decision made as to its disposition.

No staff member should accept a foreign gift for the President, the First Lady, the Vice President or Mrs. Gore except by prior arrangement with the host government or entity.

Conclusion

Your observance of these rules is essential and appreciated. This memorandum is necessarily summary and does not deal with all questions that may arise. In all instances, the Standards of Ethical Conduct for Executive Branch Employees should guide your behavior. If you are in doubt about the propriety of accepting any gift or about any other topic covered above, please consult with the Counsel's Office, by calling 456-6229.

Date: June 24, 1993

To: Chris

From: Vate

Re: Hearing Assignment

I have you assigned to attend the following hearing:

Date: **6/25**
Committee: Government Operations
Subcommittee: Environment, Energy and Natural Resources
Place: 2247 RHOB
Time: 9:30
Topic: oversight-management problems at EPA labs
Witnesses:

Please attend and write a 1/2 to 1 page summary and return to me with this form (if you want to be real environmentally sound, you can print it on the back side). In your summary, focus on major issues, specific committee members reactions and the general likelihood that legislation will be written/ go to the floor/ pass. Also, please provide me with copies of any important testimony. **This should be done by C.O.B. Thursday or A.S.A.P. on Friday for Friday hearings (I need time to put it in the weekly report).**

If you are unable to attend, please find someone to cover for you. If you can't, let me know at least a day in advance and I will try to arrange for someone to attend. Thank you.

P.S. These times and rooms are subject to change, so you may want to call the committee to confirm before going over there.

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ONE HUNDRED TI CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Environment, Energy and Natural Resources Subcommittee
Honorable Mike Synar (D-Okla.), Chairman

DATE:	Friday, June 25, 1993
TIME:	9:30 a.m.
PLACE:	Room 2247 Rayburn House Office Building
SUBJECT:	Management Problems and Contracting Activities at EPA Laboratories

WITNESS LIST

Panel 1

The Honorable John C. Martin
Inspector General
U.S. Environmental Protection Agency
Washington, D.C.

accompanied by: Mr. Kenneth A. Konz, Assistant Inspector General for Audit

Panel 2

Mr. Gary Foley
Acting Assistant Administrator for
Research and Development
U.S. Environmental Protection Agency
Washington, D.C.

accompanied by: Mr. Alvin Pesachowitz, Acting Deputy Assistant Administrator for Finance and Acquisition, Office of Administration and Resources Management; and Mr. Sam Windham, Acting Director of EPA's National Air and Radiation Environmental Laboratory, Montgomery, Alabama

ONE HUNDRED THIRD CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT OPERATIONS

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

OPENING STATEMENT
HONORABLE MIKE SYNAR, CHAIRMAN
June 25, 1993

Today the Subcommittee on Environment, Energy and Natural Resources will be reviewing problems surrounding management of contracts and outside assistance agreements -- such as cooperative agreements, interagency agreements and grants -- at the Environmental Protection Agency's (EPA) twelve research laboratories. The focus of today's hearing will be a series of EPA Inspector General (IG) audits of the labs which identify example after example of waste, fraud, and abuse in laboratory activities involving outsiders.

Although the number of environmental statutes that the Agency administers has grown tremendously over the past several decades, in-house staffing levels at the research labs carrying out statutory mandates has remained constant or actually decreased over that period. As a result of Agency-wide budget cuts and strictly imposed Federal employee ceilings, EPA labs have become increasingly dependent upon private contractors and outside assistance agreements to accomplish their expanded research mission.

As we will see today, this over-reliance is unhealthy. It has fostered cozy relationships between the contractors and the EPA labs whereby laboratory personnel will do almost anything to retain an incumbent contractor, including obstructing fair and open competition for contracts. In addition, the IG found abuses in cooperative agreements between EPA labs and universities, in interagency agreements, and in grants -- all for the purpose of getting around established Agency procurement rules and procedures to get the job done. The indifferent attitude concerning prudent expenditure of taxpayer dollars on the part of laboratory employees and management is particularly disturbing and must change. Laboratory employees and managers who tolerate these kinds of wasteful activities must be held accountable.

The Office of Research and Development within EPA administers the laboratory programs, while the Agency's Office of Administration and Resources Management is responsible for administering contracts and outside assistance agreements at the labs. We will be asking these two divisions how the contracting abuses cited by the IG occurred and about why oversight of the laboratories' practices has been virtually non-existent. We will also be asking what kinds of corrective and disciplinary actions the Agency plans to take to ensure that these problems don't fall through the cracks in the future.

To its credit, the Agency has responded generally positively to the Inspector General's findings and some improvements seem to be on the horizon. However, as the IG will testify today, first steps need to be followed up on. A new administration has been in place for five months, but the Agency officials responsible for ensuring that these reforms are implemented have yet to be named or, in the case of the Office of Research and Development, confirmed by the Senate. That is unacceptable. Every day that the Assistant Administrator for Administration and Resources Management and the Assistant Administrator for Research and Development vacancies remain open is a day lost to ensuring real change throughout the Agency.

That is not to say that the career officials who have been acting in these positions have done a poor job; they have actually embraced many of the IG's recommendations and championed reform. But the fact remains that they are "short-termers" and managers and employees down the line know that someone new will be coming in to take their place very soon -- we hope. It is imperative that the Administrator impress upon the President the need to get her staff in place if we are to see measurable progress on these problems anytime soon. This hearing will serve as a benchmark for Administrator Browner and her new team and its commitment to ensuring that taxpayer dollars are spent wisely and in accordance with established rules and procedures. From here on out, problems identified will be on their watch.

Today's hearing will also examine the status of funding and research activities at the Agency's two radiation laboratories, located in Las Vegas, Nevada and Montgomery, Alabama. The radiation labs are severely underfunded and, in fact, must contract themselves out to other Federal agencies, like the Department of Energy, in order to continue to operate.

Finally, the Subcommittee will review issues relating to a recent IG review of a group of cooperative research and development agreements (CRADAs) entered into by the Agency's Cincinnati laboratory under the Federal Technology Transfer Act. The CRADAs were for the purpose of developing and selling "EPA certified" quality assurance materials to regulated industry. The Cincinnati lab receives a portion of the funds raised from the sale of the materials. EPA's Inspector General has raised serious concerns about the Agency's granting exclusive use of the "EPA certified" claim only to these five companies, and questions whether any new technology was indeed transferred to the CRADA companies.

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

JUN 24 1993

THE ADMINISTRATOR

Honorable Mike Synar
Chairman
Subcommittee on Environment, Energy,
and Natural Resources
Committee on Government Operations
House of Representatives
Washington, D.C. 20515-6145

Dear Mr. Chairman:

I regret that I cannot appear before the Subcommittee to testify at your hearing on management and resource issues at EPA laboratories. I would like, in this letter, to address not only the subject of your hearings but the broader issues arising from contract management confronting EPA.

One of my highest priorities, as Administrator, is to strengthen sound management values as part of the EPA mission. I believe this will improve the efficiency and effectiveness of the contracting and assistance processes and make them an integral part of our environmental mission.

Over several years, a number of audits by the Inspector General have underscored the long-standing nature of the Agency's problems in contracts management and our assistance management programs, including grants, cooperative agreements, interagency agreements, and financial systems. As a result of these past practices, taxpayers today are demanding from their government more accountability and better services for less money. I find these demands neither unrealistic nor unfounded.

I acknowledge that we have not yet solved all of our contracts and resource management problems. However, I am persuaded from my experience these past five months of the good will and dedication of our employees in working to solve the problems. We are, as an Agency, fully committed to seizing the opportunities before us to restore sound fiscal management.

The Standing Committee on Contracts Management has conducted a thorough, in-depth analysis of Agency contracts management. The report contained compelling arguments for change and discussed a culture of "mission over management". The report recommended major improvements, some of which have been completed.

Others are in various stages of implementation. As a result of problems in this area, contracts management was declared a material weakness and placed on OMB's High Risk list in the Fiscal Year 1992 Federal Managers' Financial Integrity Act report to the President and Congress.

I am fully committed to carrying out the recommendations of the Standing Committee on Contracts Management and the SWAT project on Civilian Agency Contracting in which we heavily participated. But the creation of this committee and the implementation of its recommendations are only the beginning of our journey.

In addition to our ongoing work to implement the Standing Committee Report recommendations and my own management initiatives, a wide range of agency employees are actively involved in focus groups under the National Performance Review specifically dedicated to assessing our progress in contracts and grants management. The work of these groups will add to the efforts already underway to correct these problems.

I would like to explain the terms "mission" and "management" at EPA, and how I view the relationship between the two. Over the years, two cultures have evolved in EPA. One is better known to the public: the employees who are focused on achieving the environmental mission. The other culture at EPA is made up of those employees who are focused on management, including contracting, grants and financial employees. We now understand that the two cultures have not been effectively working together. I firmly believe that by integrating the two cultures good management principles will become an integral part of our environmental mission. I see this endeavor as one of my most important tasks.

I have begun a series of initiatives to get to the roots of the problems and remove them from our path in building the Agency's future. The principles of accountability, good management, and discipline form the foundation for these initiatives. I am dedicated to carrying out these initiatives--they have my sustained personal attention.

Accountability means that my senior management team will be held responsible for their actions. While accountability starts at the top, all Agency personnel must also be held accountable. Before personnel can be held accountable, they must understand their responsibilities. These responsibilities encompass all Agency resources, contracts and assistance management programs, human and financial. To make sure this awareness of responsibilities exists, I am instituting appropriate training programs for Agency personnel.

Good management means we must develop the capability to balance our intramural and extramural resources, and provide Agency-wide leadership to detect and solve resource management issues and problems. It means we take steps to decrease our reliance on a small group of contractors. It means enhancing competition and providing greater contracting opportunities for small and small disadvantaged businesses. Good management also means we must be able to anticipate problems and opportunities so that we avoid lurching from crisis to crisis.

Further, I will implement initiatives to improve our disciplinary system. The system must send a clear message to EPA managers and staff about the gravity of resource management violations. In addition, this disciplinary system, and the penalties for these types of violations, must be clearly communicated so that EPA staff and its managers can be appropriately held accountable for resource management violations.

Over the past year there has been some improvement. Our program offices are establishing structures to provide up-to-date procurement guidance. Many have found effective ways to work with contracts and grants professionals to solve difficult management problems, and many are investing in ways to improve their ability to evaluate their contract and grant management practices.

Indeed, in the past year program offices have started to hire procurement professionals; devote additional resources to contracts and grants management; and find effective ways to involve top management in contracting and grants problem-solving. These are all ways we are bringing the two cultures together.

In conclusion, I am committed to working with my colleagues at EPA to make this Agency a model of efficiency and accountability in pursuit of our environmental mission. I hope this report is helpful to you as you inquire into management and resource issues at EPA laboratories. If I can be of further assistance, please let me know.

Sincerely,

Carol M. Browner

Carol M. Browner

TESTIMONY OF
GARY J. FOLEY
ACTING ASSISTANT ADMINISTRATOR FOR RESEARCH AND DEVELOPMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT, ENERGY, AND NATURAL RESOURCES
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

June 25, 1993

Mr. Chairman, I am Gary J. Foley, EPA's Acting Assistant Administrator for Research and Development. I appreciate the opportunity to testify before you and your Subcommittee on the management and resource issues surrounding EPA's laboratories. Administrator Browner regrets that she is unable to be here today to convey personally her commitment to increase sound fiscal management throughout the Agency. She has provided the Subcommittee with a letter which outlines her initiatives.

With me at the table is Alvin Pesachowitz, the Acting Deputy Assistant Administrator for Finance and Acquisition, Office of Administration and Resources Management. Mr. Pesachowitz is available to answer questions about extramural resources management. Also with me today is Sam Windham, Acting Director of the National Air and Radiation Environmental Laboratory in Montgomery, Alabama. He is available to answer questions regarding the status of funding and research activities at EPA's two radiation laboratories.

Issues involving EPA's management of contracts, grants, cooperative agreements, and interagency agreements have been widely reported. The Administrator has emphasized the high priority she places on improving the Agency's management of these resources and rebuilding public confidence in the Agency. The Administrator has begun a series of initiatives to address these problems and remove any barriers obstructing their path. She has stressed that the principles of accountability, good management, clear guidance and expectations, and discipline will form the basis for these initiatives.

The research that ORD conducts is vital for ensuring that the decisions made at EPA are based on sound science. Let me assure you that the Agency and all senior management recognize that serious problems have occurred in the management of Federal resources. We are taking decisive steps to make sure that these resources are used appropriately, and that we are accountable for proper use up and down the line.

BACKGROUND ON ORD OPERATIONS

Before discussing ORD's management of extramural resources, I would like to provide some background information on ORD and its operations. ORD is responsible for conducting research, development, and demonstration activities and for providing analytical, assessment, and technical support to Agency programs. Our activities are conducted in our laboratories and through extramural programs conducted under research contracts, assistance agreements, and interagency agreements. ORD's twelve laboratories, four assessment offices, and three field stations are geographically dispersed throughout the country. These facilities employ approximately 1,700 Federal employees and 2,000 on-site contractors or other non-Federal personnel who support our in-house programs. Over the last 12 years (FY 1980-1992), our annual extramural budget (R&D and Superfund appropriations) has increased from $233 million to $324 million.

RECOGNIZING OUR VULNERABILITY

Several years ago, ORD analyzed its on-site work force. The resulting report, called Workforce '91, made clear the extent to which ORD had become reliant on on-site contractors and other non-Federal staff. We have provided copies of that report to the Subcommittee. The heavy reliance on on-site contractors, with limited Federal staff to conduct research and manage both the on-site contracts and our off-site activities, raised concerns within ORD about the ability to manage our extramural activities.

After additional assessments identified vulnerabilities in ORD's management of extramural resources, EPA reported ORD extramural management as a material internal control weakness in the Agency's Federal Managers' Financial Integrity Act (FMFIA) Report to the President and Congress in December 1990. The report also stated that EPA's management controls over its contractors needed strengthening.

The report indicated that personnel charged with managing contracts were inadequately trained to perform at an acceptable level of stewardship and competence.

The previous Assistant Administrator directed ORD Office and Laboratory Directors to devote increased attention to resolving these problems. To coordinate improvements and to assure ORD-wide participation, he established an ORD Council on Management Controls in June 1991. As one of its first actions, the Council was directed to review ORD's extramural resources management and make recommendations for corrective action.

ORD's ACQUISITION MANAGEMENT IMPROVEMENT INITIATIVE

In October 1991, the ORD Council on Management Controls recommended that representatives from ORD and the Office of Administration and Resources Management (OARM) visit each ORD facility to assess extramural management activities and to recommend improvements. A member of the Senior Executive Service was reassigned to a newly created position as ORD Acquisition Executive to lead this effort.

Based on a review of the issues and available analyses, the Acquisition Executive developed and began to implement an ORD-wide Acquisition Management Improvement Initiative. The goal of this initiative was to recommend policy, procedural, organizational, and management changes to enhance ORD's ability to manage effectively and efficiently all extramural activities.

The first step in the review was a visit by a team of ORD and OARM staff to each of the ORD operating sites. These Acquisition Management Improvement Reviews occurred between December and July 1992. Over 500 ORD managers and staff responsible for managing extramural activities were involved.

Our objective was to assure that all ORD staff involved in managing contracts understood their responsibilities and the rules, regulations, and procedures regarding contract management. The reviews were also used to identify specific problems or issues that needed to be addressed in order to improve ORD's stewardship of its extramural resources.

The reviews demonstrated the need for new or improved policies in the following areas:

- Need for clear assignment of responsibility for the management of extramural resources;
- Need for greater involvement of senior management;
- Need for additional extramural resources management expertise;
- Need for more focused training on management and administration of extramural resources; and

- Need for an extramural resources planning system to relate integrated program requirements and manage lead-times.

In addition, the reviews identified numerous issues which were unique to individual facilities. These issues are addressed in the corrective action plans developed for each facility.

INSPECTOR GENERAL SURVEYS AND AUDITS

In addition to and parallel with ORD's activities, EPA's Office of the Inspector General (OIG) initiated a program to review ORD's laboratories. As you know, the OIG has issued eight survey and three audit reports on EPA's research and development laboratories to date.

ORD considers these Inspector General audits and survey reports as positive and beneficial to the management of ORD's extramural resources. The OIG recommendations strengthen the actions toward improvements suggested by ORD's own reviews, and in addition identified several areas needing our attention.

We have acted promptly on the OIG audits and surveys with proposed corrective action plans which address the immediate issues raised and which extend improvements throughout the ORD system. I am pleased to note that the Inspector General has accepted our plans as responsive and appropriate. Work has begun on all of the 250 or so OIG recommendations we have received to date, some have been completed, and we expect completion of most of the remainder by September 30, 1993.

ORD IMPROVEMENT ACTIONS

We, in ORD, have only taken the first step in an on-going process to ensure a continuing emphasis on quality in the management of ORD's extramural resources. Each review identified specific and generic issues and problems. These findings and those of the OIG are being incorporated into action plans for each laboratory and office. To assess the progress that each ORD facility is making, I have directed that a second round of reviews be conducted this year. This round of reviews will also include an in-depth discussion of assistance agreements and interagency agreements.

Taking an even broader view in order to strengthen the review capacity, I have directed the development of an ORD-wide management improvement project based on the FMFIA program of improving management controls. This project has three phases. First is identification of management controls needing assessment or periodic review. Second is the development of a methodology for assessing the controls and determining a schedule for periodically reviewing the controls ORD-wide. Finally, this project will organize a program to inform and train all ORD personnel about this management improvement effort and their responsibilities under it. The overall goal of this project is to strengthen ORD's management processes and activities. Periodic self-assessments and audits of management controls and practices will allow the ORD offices and laboratories to be proactive in their approach to improving management of extramural resources.

I have also reaffirmed three ORD directives first issued in March 1992. These directives require the laboratories to reduce their reliance on on-site, level-of-effort contracts, which have been the source of many of ORD's vulnerabilities. As replacement for on-site contracts, the laboratories are increasing the use of competitive contracts and involving the external scientific community more fully.

Other ORD management actions underway include:

- o Clearly defining management of extramural resources as a primary responsibility of ORD's line managers and establishing accountability through management reviews and performance standards and assessments.
- o Ensuring that each ORD laboratory and office has sufficient staff trained in acquisition and assistance policies to provide guidance and to assist senior managers in their extramural management activities. Senior managers responsible for extramural management activities along with the acquisition specialists form an ORD-wide acquisition network that serves both as a vehicle to disseminate the latest information and to provide a forum for discussion and resolution of emerging issues or problems.

- Developing training courses that are intended to supplement currently available courses and to address ORD specific issues. The first module of a Technical Project Management Training Course for work assignment managers was pilot tested last week. All ORD project officers and work assignment managers will be required to complete this course during the next two years.
- Preparing updated ORD policies, procedures, and guidance on management of extramural resources.

CONCLUSION

Let me again emphasize the importance that both Administrator Browner and I have placed on the need to improve the management of ORD's resources. While extramural management is receiving the greatest attention, she has stated that how we utilize all our resources--people, facilities, and dollars--is critical to EPA's stewardship of the public's monies and the public's trust. It is essential that we carry out our mission to perform high quality research and to assist the Agency in the accomplishment of its mission in the most effective and efficient manner possible within the existing Agency and Federal rules and regulations.