



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

*Ensuring clean and safe water  
Compliance with the law*

## **EPA Has Not Reported to Congress on BEACH Act Progress as Statutorily Required or Fully Documented Budget Decisions**

Report No. 18-P-0071

January 18, 2018



## Report Contributors:

Kathlene Butler  
Khadija Walker  
Danielle Tesch  
Stacey Banks  
Jayne Lilienfeld-Jones

## Abbreviations

ADP	Action Development Process
BEACH Act	Beaches Environmental Assessment and Coastal Health Act of 2000
CWA	Clean Water Act
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
GAO	U.S. Government Accountability Office
OIG	Office of Inspector General
OMB	Office of Management and Budget
OW-OST	Office of Water's Office of Science and Technology

**Cover photos:** *Clockwise, from top left:* Pensacola Beach in Florida, Escambron Beach in Puerto Rico, and Cape Henlopen State Park in Delaware. (EPA OIG photos)

**Are you aware of fraud, waste or abuse in an EPA program?**

**EPA Inspector General Hotline**  
1200 Pennsylvania Avenue, NW (2431T)  
Washington, DC 20460  
(888) 546-8740  
(202) 566-2599 (fax)  
[OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov)

Learn more about our [OIG Hotline](#).

### **EPA Office of Inspector General**

1200 Pennsylvania Avenue, NW (2410T)  
Washington, DC 20460  
(202) 566-2391  
[www.epa.gov/oig](http://www.epa.gov/oig)

Subscribe to our [Email Updates](#)  
Follow us on Twitter [@EPAoig](#)  
Send us your [Project Suggestions](#)



# At a Glance

## Why We Did This Review

The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) conducted this evaluation to determine how EPA grants provided under the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act) assist states, territories and tribes (collectively referred to here as “grantees”) to monitor the water quality of coastal recreation waters and notify the public of contamination events.

The EPA provides grants to eligible recipients under the BEACH Act to monitor recreation waters for bacteria and to notify the public about high bacteria levels to protect human health. Under the act, the EPA is required to, among other things, submit reports to Congress and establish performance and water quality criteria for grantees’ coastal recreation water monitoring and notification programs.

### This report addresses the following:

- *Ensuring clean and safe water.*
- *Compliance with the law.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit [www.epa.gov/oig](http://www.epa.gov/oig).

Listing of [OIG reports](#)

## ***EPA Has Not Reported to Congress on BEACH Act Progress as Statutorily Required or Fully Documented Budget Decisions***

### What We Found

Grantees use BEACH Act grants to operate their beach monitoring and public notification programs. While the details of these programs may vary from grantee to grantee, all programs must meet performance criteria before the EPA awards the grant.

**Failure to submit required reports and keep required records limits congressional, public and EPA knowledge about the impact of the agency’s BEACH Act program and decisions regarding the use of taxpayer dollars.**

The EPA has not submitted the required quadrennial reports to Congress describing the BEACH Act program’s progress and impacts since 2006. In response to an Office of Management and Budget request, the agency identified the BEACH Act report as one it no longer believes should be a reporting requirement; the agency compiled a list of all such reports to submit with its fiscal year 2019 budget request. Submitting BEACH Act reports would inform Congress and the public about efforts to implement the act, the need for additional water quality indicators, and the need for improved monitoring methodologies.

Further, beginning in fiscal year 2013, the EPA stopped requesting funding for the BEACH Act grant program based, in part, on its view that the grant program is “mature.” While the agency documented its initial deliberations and final decision, it has not documented the requisite supporting analysis and information used to make its decision. Grantees anticipate that a lack of future funding will negatively impact their beach monitoring and public notification programs. Although the EPA is no longer requesting funds, Congress has continued to fund the program.

### Recommendations and Planned Agency Corrective Actions

We recommend that the EPA submit mandated reports to Congress, but the agency disagrees and resolution efforts are in progress. We also recommend that the agency (1) review and update, as appropriate, the controls for ensuring that mandated reports are identified, tracked and submitted and (2) update the reporting process, especially for elevating and resolving disagreements about report content. The EPA agreed, and planned corrective actions meet the intent of the recommendations. We also recommend that the EPA develop and implement a tool to demonstrate compliance with recordkeeping requirements on budget decisions, but it disagrees and resolution efforts are in progress. The EPA agreed to update the agency records management policy and schedules as needed.

### Noteworthy Achievements

In 2016, the EPA released a marine [sanitary survey mobile application](#) that provides managers of marine beaches with an innovative and consistent approach for identifying sources of beach pollution.



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

THE INSPECTOR GENERAL

January 18, 2018

**MEMORANDUM**

**SUBJECT:** EPA Has Not Reported to Congress on BEACH Act Progress  
as Statutorily Required or Fully Documented Budget Decisions  
Report No. 18-P-0071

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

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

**TO:** *See Below*

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this evaluation was OPE-FY15-0056. The report contains findings that describe the problems identified by the OIG and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Multiple offices are responsible for the issues addressed in this report. Recommendations 2, 3 and 5 are resolved and need no further response. Recommendation 1 (addressed to the Assistant Administrator for Water) and Recommendation 4 (addressed to the Chief Financial Officer) are unresolved. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

**Action Required**

In accordance with EPA Manual 2750, resolution for Recommendations 1 and 4 should begin immediately upon issuance of the report. We are requesting meetings between the Assistant Administrator for Water, Chief Financial Officer, and Assistant Inspector General for Audit and Evaluation to start the resolution process and attempt to obtain resolution on these recommendations. If resolution is not reached within 30 days, the Assistant Administrator for Water and/or the Chief Financial Officer are required to complete and submit a dispute resolution request to the Deputy Administrator to continue the resolution process for final decision. Final decisions on the unresolved recommendations will be posted on the OIG's website after the completion of the resolution process outlined in EPA Manual 2750. We have no objections to the release of this report to the public.

We will post this report to our website at <http://www.epa.gov/oig>.

Addressees:

David P. Ross, Assistant Administrator for Water

Troy Lyons, Associate Administrator for Congressional and Intergovernmental Relations

Samantha Dravis, Associate Administrator for Policy

David Bloom, Deputy Chief Financial Officer

Steven Fine, Acting Assistant Administrator for Environmental Information and  
Acting Chief Information Officer

# Table of Contents

## Chapters

<b>1</b>	<b>Introduction</b> .....	<b>1</b>
	Purpose .....	1
	Background.....	1
	Responsible Offices .....	5
	Noteworthy Achievements .....	5
	Scope and Methodology .....	6
<b>2</b>	<b>Grantees Use BEACH Act Funds for Routine Monitoring and Notification Activities</b> .....	<b>7</b>
	BEACH Act Grants Assist in Monitoring and Notification Programs .....	7
	Grantees’ Monitoring and Notification Activities Assist EPA in Tracking BEACH Act Program Performance .....	8
	Conclusion .....	8
<b>3</b>	<b>EPA Has Not Fulfilled BEACH Act Reporting Requirement to Congress</b> .....	<b>9</b>
	Disagreements and Lack of Appeal Process Led to a Reporting Breach for Reports to Congress.....	9
	EPA Decided Not to Draft or Submit Another Report to Congress .....	11
	Conclusion .....	12
	Recommendations .....	12
	Agency Comments and OIG Evaluation .....	13
<b>4</b>	<b>EPA Has Not Documented Its Supporting Analysis for Eliminating the BEACH Act Grant Program</b> .....	<b>14</b>
	EPA Has Not Kept Records to Document Budget Decisions About BEACH Act Grant Program.....	14
	Despite EPA’s Proposal to Cut BEACH Act Grants, Congress Continues to Provide Funding .....	16
	Lack of BEACH Act Grant Funding Could Negatively Impact Grantee Beach Monitoring and Notification Programs.....	17
	Conclusion .....	18
	Recommendations .....	19
	Agency Comments and OIG Evaluation.....	19
	<b>Status of Recommendations and Potential Monetary Benefits</b> .....	<b>20</b>

## Appendices

<b>A</b>	<b>EPA Beach Program Logic Model .....</b>	<b>21</b>
<b>B</b>	<b>Prior Reports .....</b>	<b>24</b>
<b>C</b>	<b>Agency Response to Draft Report.....</b>	<b>26</b>
<b>D</b>	<b>Distribution .....</b>	<b>32</b>

# Chapter 1

## Introduction

### Purpose

The U.S. Environmental Protection Agency's (EPA's) Office of Inspector General (OIG) conducted this evaluation to determine how grants under the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act) assist states, territories and tribes (collectively referred to here as "grantees") in monitoring water quality of coastal recreation waters, and notifying the public of contamination events.

### Background

Each year Americans take a total of more than 900 million trips to coastal areas, spending approximately \$44 billion annually during these visits. Counties adjacent to beaches contributed an estimated \$6 trillion toward the nation's gross domestic product and 47 million jobs in 2010. Serious risks to the health of recreational swimmers, as well as serious economic consequences, can occur from sewer overflow runoff into coastal waters; water treatment plant malfunctions; stormwater runoff after rainfall; waste from boats; leaking septic systems; or livestock, pet and wildlife waste.

Exposure to polluted waters that contain bacteria and/or viruses can cause symptoms such as ear, nose and eye infections; diarrhea; vomiting; skin rashes; and respiratory illnesses. Children, the elderly, and those with weakened immune systems are particularly susceptible to diseases.

### ***Requirements Under the BEACH Act***

The BEACH Act amended the Clean Water Act (CWA) to improve the quality of coastal recreation waters and for "other purposes," including protecting human health. The act defines "coastal recreation waters" as the Great Lakes and marine coastal waters (including coastal estuaries) that are designated under CWA Section 303(c) for such uses as swimming, bathing, surfing, or similar water contact activities (BEACH Act Section 5). The BEACH Act requires or otherwise notes the following:

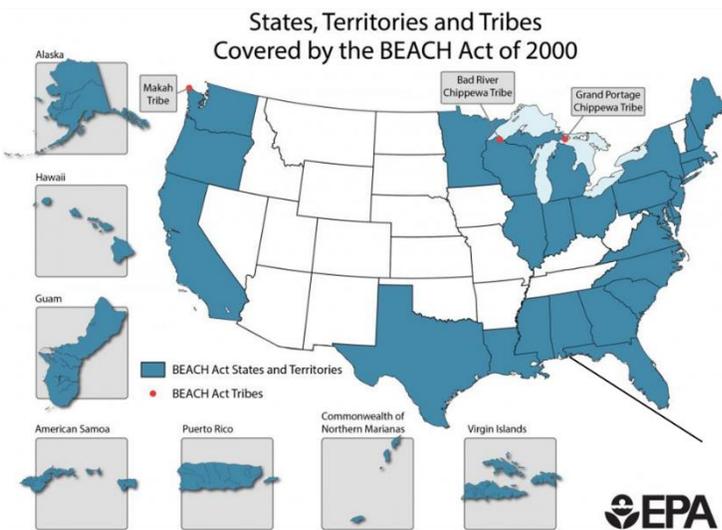
1. The EPA is to research pathogens and pathogen indicators in coastal recreation waters and research testing methods to detect pathogens/pathogen indicators (BEACH Act Section 3 and CWA Section 104(v)).
2. The EPA is to develop, and grantees are to adopt, coastal recreation water quality criteria. Implementation of new or revised water quality criteria for

pathogens and pathogen indicators is specifically for protecting human health in coastal recreation waters (BEACH Act Section 3 and CWA Section 304(a)(9)).<sup>1</sup>

3. The EPA is to develop performance criteria for coastal recreation water monitoring and notification programs (BEACH Act Section 4(d) and CWA Section 406(d)).
4. The EPA may award grants to implement monitoring and notification programs if the program is consistent with performance criteria established by the agency (BEACH Act Section 4(b) and CWA Section 406(b)).
5. The EPA is to submit a Report to Congress every 4 years, beginning in 2004, that includes recommendations concerning pathogens and pathogen indicators, an evaluation of efforts to implement the BEACH Act, and recommendations on improvements (BEACH Act Section 7).
6. Eligible coastal grantees are to develop and implement coastal recreation water monitoring and notification programs that meet performance criteria if receiving grant money from the EPA (BEACH Act Section 4(c) and CWA Section 406(c)).

### **EPA Grants for Beach Monitoring and Public Notification**

**Figure 1: Map of grantees covered by the BEACH Act**



Source: EPA map.

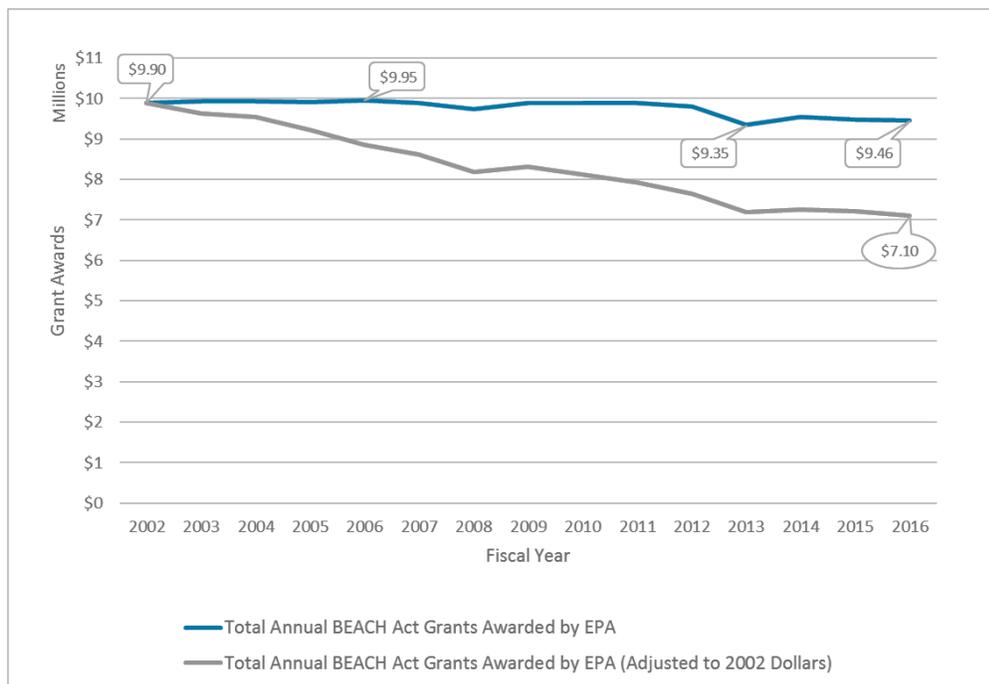
The EPA provides BEACH Act grants to eligible grantees in coastal states and those along the Great Lakes (Figure 1). Grantees use BEACH Act funds to monitor coastal beaches for bacteria that indicate the possible presence of disease-causing pathogens, and to notify the public when there is a potential risk to public health. The beach program logic model in Appendix A provides details on how the program is designed to work.

Between 2002 and 2016 the agency awarded approximately \$146.6 million in grants to 35 states and territories and three tribes to implement water quality monitoring and public notification programs at coastal beaches. While the

<sup>1</sup> The 2012 *Recreation Water Quality Criteria* allows grantees to suggest alternative criteria that take into consideration local environmental conditions and human exposure patterns if they are scientifically defensible, protective of use, and approved by the EPA.

amounts awarded have varied over those 15 years, on average the EPA has awarded nearly \$9.8 million to grantees each year (Figure 2). When adjusted to 2002 dollars with the Consumer Price Index Inflation Calculator,<sup>2</sup> the value of the grants awarded has decreased over time (e.g., the nearly \$9.5 million in BEACH Act grants awarded in fiscal year (FY) 2016 has an approximate value of \$7.1 million).

**Figure 2: Total BEACH Act grant awards (2002–2016)**



Source: EPA OIG analysis.

Grantees receive between \$50,000 and \$500,000 in BEACH Act grants from the EPA annually, based on parameters in the agency’s allocation formula. That formula relies on readily available and verifiable data, including the following:

1. The length of the beach season (an indicator of resources a grantee would need to conduct monitoring).
2. The number of shoreline miles (an indicator of the geographical extent over which a grantee would conduct monitoring).
3. The coastal county population (an indicator of beach use by the public).

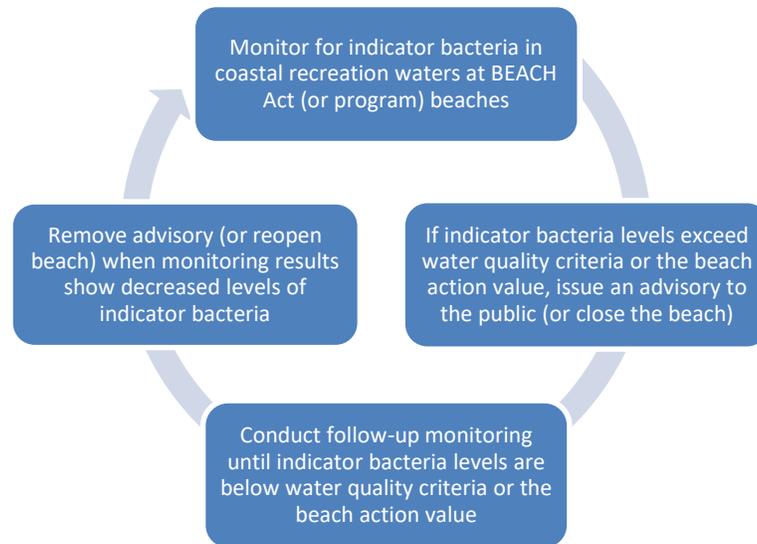
As such, a grantee with a longer beach season, more shoreline miles, and a larger coastal county population would need more resources than other grantees. In 2010, the agency developed a supplemental allocation formula to redistribute underutilized BEACH Act grant funds to eligible grantees. This was based on a 2007 recommendation from the U.S. Government Accountability Office (GAO), as discussed in Appendix B.

<sup>2</sup> U.S. Department of Labor, Bureau of Labor Statistics, [Consumer Price Index Inflation Calculator](#).

## State Beach Monitoring and Public Notification Programs

Terms of BEACH Act grants require that grantees adopt recreation water quality criteria, monitor coastal recreation waters for indicator bacteria, notify the public when bacteria levels exceed criteria, and annually report monitoring and notification data to the EPA.<sup>3</sup> Figure 3 shows the cycle grantees use to monitor and notify the public of beach conditions.

**Figure 3: Grantee coastal recreation water monitoring and public notification cycle**



Source: EPA OIG summary of EPA Office of Water's 2014 *National Beach Guidance and Performance Criteria for Grants*.

In 2012, of the 3,762 coastal beaches monitored by grantees, 40 percent (1,504 beaches) had at least one advisory or closure due to exceedances of the recreation water quality criteria. Grantees issued a total of 5,725 notification actions (i.e., advisories or closings) during the 2012 swimming season. Typically, an action is lifted when follow-up monitoring proves that water quality complies with applicable standards.

### **National Beach Guidance and Required Performance Criteria for Grants**

The EPA's *National Beach Guidance and Required Performance Criteria for Grants*<sup>4</sup> outlines the performance criteria that an eligible state must meet to receive grants to implement coastal recreation water monitoring and public

<sup>3</sup> The EPA recommends that grantees make a risk management decision to select the most appropriate illness rate and corresponding set of criteria values for their waters.

<sup>4</sup> EPA Office of Water, *National Beach Guidance and Required Performance Criteria for Grants*, 2014 Edition, [EPA-823-B-14-001](#), July 2014.

notification programs. Grantees must meet 11 performance criteria for implementing monitoring, assessment and notification programs. The performance criteria categories include using a risk-based beach evaluation process to classify beaches into tiers,<sup>5</sup> a monitoring plan using approved monitoring and assessment procedures, a public notification and risk communication plan, adoption of new or revised water quality standards and beach notification thresholds, and public evaluation of the program.

The EPA awards BEACH Act grants in two phases: initial program development and implementation phases. As of August 2017, the agency beach program staff believed all eligible states, tribes, and territories received implementation grants.

## Responsible Offices

The Office of Water's Office of Science and Technology (OW-OST) administers the BEACH Act program and prepares required reports to Congress. The Office of Policy and the Office of Congressional and Intergovernmental Relations, both within the Office of the Administrator, are responsible for ensuring the agency completes and submits required reports to Congress. The Office of the Chief Financial Officer is responsible for keeping official agency records about budget decisions. The Agency Records Officer within the Office of Environmental Information is responsible for ensuring the agency's management of official agency records.

## Noteworthy Achievements

In 2016, the EPA released a [marine sanitary survey mobile application](#) based on the agency's routine marine beach sanitary survey form. The mobile application provides managers of marine beaches with an innovative and consistent approach for identifying sources of beach pollution in the field.<sup>6</sup> Additionally, the Office of Water published a non-technical guide on how to develop predictive tools in the context of an overall beach monitoring and notification program.<sup>7</sup>

Also in 2016, the EPA hosted the first national conference for stakeholders on recreation waters since 2011 to discuss wide-ranging issues related to human health and recreational water quality. At the time of our interviews, EPA regional and state beach managers indicated that national conferences provided opportunities to network and share lessons learned with other managers and stakeholders.<sup>8</sup>

---

<sup>5</sup> The EPA recommends that grantees use three tiers to classify their beaches. "Tier 1" beaches would include a grantee's highest priority beaches based on high risk and/or high use. "Tier 3" beaches would include beaches with significantly lower risk and/or use. "Tier 2" beaches would fall somewhere between Tier 1 and Tier 3 beaches. According to the EPA, in August 2017 it added a "Tier 4" designation for beaches where grantees do not report monitoring or notification data to the agency.

<sup>6</sup> For more information about marine sanitary surveys, including the mobile application, see the [EPA's website](#).

<sup>7</sup> EPA Office of Water, *Six Key Steps for Developing and Using Predictive Tools at Your Beach*, [EPA 820-R-16-001](#), March 2016.

<sup>8</sup> [2016 Recreation Waters Conference](#), April 12–15, 2016, New Orleans, Louisiana.

## Scope and Methodology

We conducted this performance audit 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted this audit between August 2015 and January 2016, and then from December 2016 to July 2017; this assignment was suspended from February 2016 through November 2016.

We reviewed the BEACH Act and the CWA, budget justifications for the beach program, documents and guidance prepared by the EPA, an example of a grant agreement between the EPA and a state, and prior audits conducted by the GAO and EPA OIG. We interviewed managers and staff in the OW-OST, the Office of the Chief Financial Officer's Office of Budget, the Office of the Administrator's Office of Policy and Office of Congressional and Intergovernmental Relations, and the Agency Records Officer in the Office of Environmental Information.

We also interviewed managers and staff in the following EPA regions and states about their beach monitoring and notification programs: Region 2 (Puerto Rico), Region 3 (Delaware), Region 4 (Florida), Region 5 (Minnesota and the Minnesota Grand Portage Band of Chippewa tribe), Region 6 (Louisiana), Region 9 (California and Hawaii), and Region 10 (Washington state). During state site visits, we observed sampling by state beach programs at different locations.

We also interviewed the Centers for Disease Control and Prevention's National Center for Emerging and Zoonotic Infections Diseases, and the following non-governmental organizations knowledgeable on water quality, beach monitoring, and notification: the Natural Resources Defense Council, the Surfrider Foundation's Blue Water Task Force, and the Mid-Atlantic Regional Association Coastal Ocean Observing System. We interviewed leadership and member states from the Coastal States Organization, and surveyed the member states that have their beach monitoring and notification activities managed by coastal zone management programs about the potential impact of no or decreased grant funding for their beach programs.

### ***Prior Audits***

The GAO and EPA OIG have both issued reports related to EPA implementation of the BEACH Act. Additionally, the EPA OIG issued a report on the agency's renewable fuel standards program that is relevant to our discussion in Chapter 3 about required reports to Congress. Details on these reports are in Appendix B.

## Chapter 2

### Grantees Use BEACH Act Funds for Routine Monitoring and Notification Activities

Grantees use BEACH Act grant funds for the operation of their beach programs—from monitoring for indicator bacteria to notifying the public of unsafe conditions in coastal recreation waters. The details of these programs can vary from grantee to grantee, but all potential grantee programs must meet the agency’s performance criteria before being awarded a grant. The EPA tracks performance of progress toward program goals with two measures. According to the EPA, the program generally achieves its annual goals for 98 percent of high-priority beaches monitored and managed by grantees, and 95 percent of beach season days where beaches were open and safe for swimming.

#### BEACH Act Grants Assist in Monitoring and Notification Programs

The EPA awards grants for beach monitoring and notification programs that meet the requirements of the *2014 National Beach Guidance and Required Performance Grant Criteria*. Generally, BEACH Act grants awarded in one fiscal year fund the monitoring and notification programs for the following beach season. For instance, FY 2016 BEACH Act grants awarded by EPA regions were to be used by grantees for the 2017 beach season. Grantees generally conduct beach monitoring seasonally, typically from April or May to September or October. A handful of grantees interviewed monitor beaches year-round (California, Florida, and Hawaii); Washington state said the Makah Tribe also monitors its beaches year-round.

Grantees we interviewed reported using the grants to cover a range of expenses and activities associated with beach monitoring and notification, such as staffing, sampling, analysis, signage and supplies. Grantee programs may vary in terms of



Minnesota Grand Portage Band of Chippewa Ojibwe language posters used for beach notifications. (EPA OIG photo)

how frequently they monitor their beaches, the laboratory methods used to analyze water samples, and how the public is notified of elevated bacteria levels. For example, Delaware’s program monitors its most popular beaches twice a week, starting with the second Monday in May and continuing through the last week of September, while Florida’s program monitors approximately 17 percent of its beaches once every 2 weeks year-round.

Grantees primarily use EPA-approved, culture-based methods that take approximately 18 to 48 hours to analyze water samples for indicator bacteria levels. Some states are exploring the use of more rapid methods that can produce results in as few as 3 hours after the lab receives the water samples (e.g., California, Florida and Michigan) and predictive modeling (e.g., California, New Jersey and New York). A combination of notification methods appears to work the best for reaching multiple audiences of beach visitors. States generally have used websites, signs, local news and radio to notify beach visitors of elevated bacteria levels, but have supplemented these methods with social media notifications. States may also provide notifications in additional languages.

## Grantees’ Monitoring and Notification Activities Assist EPA in Tracking BEACH Act Program Performance

The EPA currently uses two measures to track performance that coastal recreation waters are safe for swimming and other activities.<sup>9</sup> Grantees’ required submission of monitoring data and notification information assists the EPA in measuring and tracking the program’s performance. Table 1 summarizes available program performance data from FYs 2013–2016. Overall, performance of the EPA’s beach program has been high during these years, usually meeting or nearly meeting program goals (numbers in green represent goals being met; numbers in orange represent goals nearly being met). According to the agency, the EPA will no longer track these two measures beginning in FY 2018.

**Table 1: EPA’s two performance measures for BEACH Act program (FYs 2013–2016)**

Fiscal year	Percent of beach season days monitored that coastal and Great Lakes beaches are open and safe for swimming		Percent of Tier 1 (highest priority) public beaches monitored and managed under BEACH Act program	
	Goal (percent)	Actual (percent)	Goal (percent)	Actual (percent)
2013	96.0	96.0	98.0	98.1
2014	95.0	96.8	95.0	98.1
2015	95.0	94.2	97.0	99.5
2016	95.0	94.5	98.0	99.0

Source: OIG analysis and summary of EPA performance data.

## Conclusion

Grantees protect human health from waterborne illnesses by using BEACH Act funds to develop and implement programs that monitor bacteria levels in coastal recreation waters and to notify the public of elevated bacteria levels.

<sup>9</sup> EPA Office of Water, *FY 2016-2017 National Water Program Guidance*, [EPA 420-R-15-008](#), April 2015.

# Chapter 3

## EPA Has Not Fulfilled BEACH Act Reporting Requirement to Congress

The agency has failed to fulfill the legal requirement under Section 7 of the BEACH Act to report to Congress every 4 years on the BEACH Act grant program's progress and impact on water quality and public health. The act requires that the EPA report on recommendations for additional criteria or actions to improve water quality, a national assessment of the implementation of the BEACH Act, and areas for improvement in monitoring. The EPA last submitted this required report to Congress in 2006. According to EPA staff, lack of resources, in addition to disagreement on the content of the report and whether the grants should continue, led the EPA to cease its congressional reporting. The EPA's current guidance for issuing such reports does not include a process for addressing or appealing such disagreements. By not fulfilling this reporting requirement, Congress and the public have not been informed about the BEACH Act program since 2006. The agency said submitting the BEACH Act report to Congress was unnecessary. However, the reporting requirement remains until Congress eliminates it.

### Disagreements and Lack of Appeal Process Led to a Reporting Breach for Reports to Congress

Under the BEACH Act, the EPA Administrator is responsible for submitting a report to Congress every 4 years.<sup>10</sup> The BEACH Act required the agency to prepare and submit the first report to Congress by 2004; subsequent reports would have been due to Congress in 2008, 2012 and 2016. The agency submitted a delayed first report to Congress in 2006. Based on the submittal of this 2006 report to Congress, the agency concluded it should submit subsequent reports to Congress in 2010 and 2014, with the next report due in 2018.

The agency did prepare a second BEACH Act report in 2010, although



Hawaii's state lab analyzing beach samples using the EPA's standard 24-hour method. (EPA OIG photo)

<sup>10</sup> Section 7 of the BEACH Act requires that the report to Congress include (1) recommendations concerning the need for additional water quality criteria for pathogens and pathogen indicators and other actions to improve the quality of coastal recreation waters; (2) an evaluation of federal, state and local efforts to implement the act; and (3) recommendations on improvements to methodologies and techniques for monitoring of coastal recreation waters.

submission to Congress would not have occurred until 2011, but disagreements with the OMB contributed to the agency not issuing the report. Staff from the EPA's Office of Policy and Office of Water informed us that the OMB requested a congressional report message consistent with the information included in the agency's FY 2013 Congressional Budget Justification. The revised report message would describe the program as "mature" and recommend that funding is no longer provided for the BEACH Act grant program.

According to EPA OW-OST staff, the program office did not agree with making changes to the draft report based on the OMB's comments. Managers from the OW-OST said resolving disagreements between the program office and the OMB would involve elevating the issue to the Assistant Administrator for Water or the EPA Administrator for high-level resolution with OMB senior officials. OW-OST management did elevate the issue to the acting Assistant Administrator for Water for resolution. While the acting Assistant Administrator agreed the language in the report should not change to say the program was not needed, the acting Assistant Administrator decided to leave the report with the OMB. As a result, Congress and the public were not informed about the progress of the BEACH Act program.

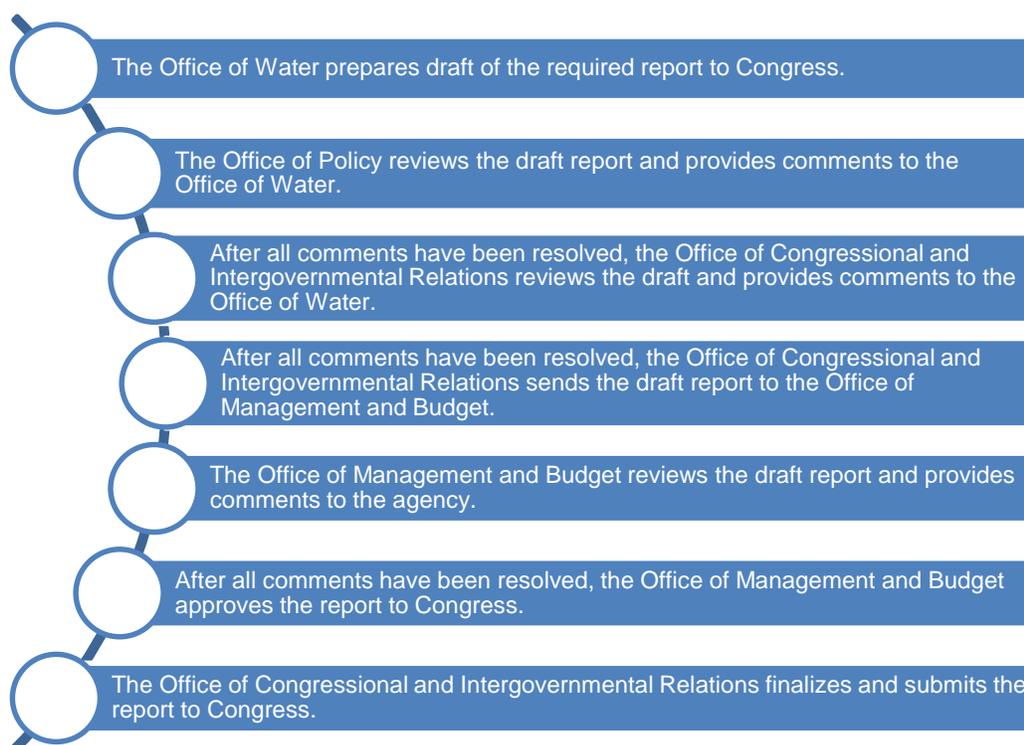
As outlined in the agency's guidance for the Action Development Process (ADP), the Office of Congressional and Intergovernmental Relations and the Office of Policy (both in the Office of the Administrator) share responsibility with the media-specific program office for issuing reports required by authorizing language. The media-specific program office has the primary responsibility for developing the action; in this case, the Office of Water is responsible for preparing the BEACH Act report to Congress. The Office of Congressional and Intergovernmental Relations keeps track of old and new required reports based on language in authorizing statutes, and reminds the respective program office of the upcoming deadlines. The Office of Water, as the responsible media-specific program office, enters major expected and accomplished milestones into the agency's action database ("ADP Tracker").

The Office of Policy established ADP guidance to manage the development of agency actions, including reports to Congress.

- Action Aid 14 outlines the process for reports required by authorizing statute.
- Action Aid 4 outlines the process for elevating and resolving workgroup issues.

The ADP guidance also contains steps for elevating and resolving workgroup issues, but does not include specific language about elevating and resolving disagreements over comments made by the OMB during its review of required reports to Congress. Figure 4 summarizes the EPA's process for issuing required reports to Congress using the required BEACH Act reports as an example.

**Figure 4: EPA process for issuing required beach program reports to Congress**



Source: OIG summary of the agency's ADP for reports to Congress.

## **EPA Decided Not to Draft or Submit Another Report to Congress**

The EPA's Office of Water chose not to draft another report to Congress. OW-OST staff told us that diminished resources prevented the office from compiling the report. However, despite the uncertainty of the program's funding and future status, the OW-OST staff continue to administer the grants, compile the national notification and monitoring data submitted by grantees, and assist grantees in adopting the 2012 recreation water quality criteria.

According to the Office of Congressional and Intergovernmental Relations, there is no protocol to inform Congress when the agency will not (or does not) submit a required report to Congress. As such, the agency told us it did not inform Congress that it would not submit BEACH Act reports. Staff said that when there is interest in a required report, it is not unusual for members of Congress or staffers to contact them for the report's status. EPA staff were not aware of any outstanding congressional interest in the BEACH Act program's required report.

As part of the 2010 Government Performance and Results Act Modernization Act, federal agencies are tasked with identifying required reports and plans that they consider outdated or no longer necessary. The OMB provides agencies with guidance about eliminating unnecessary agency plans and reports in

OMB Circular A-11 (Section 290)<sup>11</sup> and in an April 2017 memorandum.<sup>12</sup> Under OMB Circular A-11 Section 290, agencies are required to update their list of reports that may be unnecessary as part of their September 2017 budget submission for FY 2019. The Office of Congressional and Intergovernmental Relations maintains the agency's list of reports the EPA deems unnecessary. The Office of Congressional and Intergovernmental Relations included the BEACH Act program's required report to Congress in the list of reports required by statute that the agency is recommending to be eliminated. In November 2017, the agency provided this list to the Senate Committee on Environment and Public Works for feedback. In the transmittal memo to the committee, the agency indicated it submitted the same list of reports to the OMB for consideration as part of the FY 2019 budget development process. The Office of Water told us it "will await the White House's response to that request before initiating another report."

## Conclusion

Congress has not eliminated the reporting requirement for the agency's BEACH Act program. Therefore, the agency must fulfill the reporting requirement under the BEACH Act. The EPA needs to review internal controls for ensuring legal reporting requirements are met and an appeal/elevation process for addressing disagreements with OMB is well-understood and documented in its guidance. This will facilitate EPA compliance with the law and reduce risks of noncompliance.

## Recommendations

We recommend that the Assistant Administrator for Water:

1. Submit the mandated reports to Congress on progress under the Beaches Environmental Assessment and Coastal Health Act of 2000.

We recommend that the Associate Administrator for Congressional and Intergovernmental Relations, in consultation with the Associate Administrator for Policy:

2. Review and update, as appropriate, the controls for ensuring mandated reports—such as for the Beaches Environmental Assessment and Coastal Health Act of 2000—are identified, tracked and submitted.

---

<sup>11</sup> Executive Office of the President, *Preparation, Submission, and Execution of the Budget*, [OMB Circular A-11](#), 2017.

<sup>12</sup> OMB, Memorandum for Heads of Executive Departments and Agencies, Subject: Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce, [OMB M-17-22](#) (see page 8), April 12, 2017.

We recommend that the Associate Administrator for Policy, in consultation with the Associate Administrator for Congressional and Intergovernmental Relations:

3. Update the Action Development Process to clarify the process for elevating and resolving disagreements related to comments from the Office of Management and Budget on draft reports to Congress, such as the report on the Beaches Environmental Assessment and Coastal Health Act of 2000.

## Agency Comments and OIG Evaluation

The Office of Water disagreed with Recommendation 1, stating that while it understands the statutory requirements and benefits of reporting to Congress, it believes it is premature to initiate another BEACH Act report to Congress unless and until OMB responds that the report is necessary. The Office of Water suggested alternative language for this recommendation that would make the development of a report to Congress contingent on receiving notification that the BEACH Act report remains necessary. The OIG maintains that the agency must satisfy the reporting requirement until Congress eliminates the reporting requirement for the program. During the final report review process, we revised the draft recommendation to make it clearer that the agency should submit mandated reports to Congress on progress under the BEACH Act of 2000. This recommendation is unresolved with resolution efforts in progress.

The Office of Congressional and Intergovernmental Relations agreed with Recommendation 2, saying it will continue to coordinate with the Office of Policy and the Office of the Chief Financial Officer to review the controls for ensuring mandated reports are identified, tracked and issued. The office indicated it will also reissue the guidance to program offices on using the ADP Tracker. The Office of Congressional and Intergovernmental Relations estimates it will complete these corrective actions by the end of the second quarter of FY 2018. The planned corrective actions satisfy the intent of this recommendation. This recommendation is resolved with corrective actions pending.

The Office of Policy agreed with Recommendation 3, stating that it will make changes to the ADP guidance to clarify the issue of elevating and resolving disagreements related to comments from OMB. The Office of Policy estimates it will complete these corrective actions by the end of the second quarter of FY 2018. The planned corrective actions satisfy the intent of this recommendation. This recommendation is resolved with corrective actions pending.

The agency's response to the draft report is in Appendix C. The agency also provided technical comments in its response to this report. We evaluated the technical comments relevant to this chapter and made changes as appropriate.

## **Chapter 4**

### **EPA Has Not Documented Its Supporting Analysis for Eliminating the BEACH Act Grant Program**

The EPA has not requested funding for the BEACH Act grant program since FY 2012 based, in part, on its view that the grant program is a “mature” program. While the EPA documented the initial deliberations about the agency budget and the final decision about funding for the BEACH Act grant program, the agency could not provide records supporting the analysis that explains the decision-making process for this proposal. Under the Federal Records Act and the EPA’s Records Management Policy, the supporting analyses and information that lead to these budget decisions are considered records. Grantees anticipate that a lack of grant funding in the future will impact their ability to implement their beach monitoring and public notification programs, and uncertainty as to whether there will be BEACH Act grants in the future has impeded grantee programs. It should be noted that Congress has continued to fund the BEACH Act grants program for the EPA.

#### **EPA Has Not Kept Records to Document Budget Decisions About BEACH Act Grant Program**

The Federal Records Act and the EPA’s Records Management Policy require that the agency document certain agency decisions, activities and actions. The EPA develops and maintains records schedules for different types of agency activities; the records schedules describe the specific records to document the activity, establish a period for retention by the agency, and provide instructions as to what to do with the records when no longer needed for government business. The blue box on the next page describes the relevant legal authorities and guidance for recordkeeping.

## Records Management Framework for Agency Budget Decisions

The Federal Records Act ([44 U.S.C. Chapter 31](#)) requires that agency heads make and preserve records documenting the decisions and essential transactions of the agency (among other activities) (Section 3101).

The EPA's Records Management Policy ([CIO 2155.3](#)) states that records are managed for the benefit of the EPA and its staff, partners, stakeholders and the public. Additionally, all employees are responsible for creating and managing the records necessary to document the agency's official activities and actions (Section 8(l)(1)).

The EPA's [Records Schedule 1005](#) addresses financial management; it covers records related to use of financial information to measure effectiveness and efficiency of activities in relation to objectives. Specifically, budget records include (but are not limited to) background records, cost statements, rough data, etc., in preparation of annual budget estimates and reports generated throughout the budget process.

The EPA's [Records Schedule 1021](#) addresses planning and resource allocations; it covers records related to allocating resources among programs and processes and budget formulation activities undertaken to determine priorities for future spending.

The National Archives and Records Administration [Management Guide Series 1995](#) provides federal agencies with guidance on the management of records. It specifically provides guidance on whether drafts and working files should be considered records. The guide states that drafts and working files that propose and evaluate options or alternatives and their implications in the development of high-level policies and decisions, or that document findings or support recommendations, should be preserved.

For the FY 2013 budget process, the OMB requested that agencies look for programs that could increase efficiencies, be consolidated with other programs, or be terminated. In response to the OMB's request, the EPA held a budget forum in 2011 with senior leadership from national and regional program offices to develop consensus about budget decisions. Agency officials indicated they made the decision to eliminate the BEACH Act grants at this forum. The agency kept records of notes taken during the budget forum. According to the notes provided, agency senior leaders attending the 2-day budget forum discussed the agency's FY 2013 budget but did not discuss the BEACH Act grant program in detail.

Managers in the EPA's Office of the Chief Financial Officer said the agency used the following four criteria to identify agency programs for elimination:

- (1) The maturity of the program.
- (2) Understanding of issues addressed by the program.
- (3) Availability of agency guidance.
- (4) Ability of the program to operate at local level without federal support.

The agency did not provide documentation for its analysis of how the BEACH Act grant program met the four criteria. Such documentation could include cost-benefit analyses, evaluations of program impact, and application of agency criteria to identify programs for elimination. According to National Records Management Program staff, this type of documentation would be a record under EPA Records Schedule 1005 and possibly under EPA Records Schedule 1021. This is also supported by the agency's flowchart for determining what is a record, which states that "supporting materials sufficient to document and/or explain the document trail/decision making process for administrative, legal, final, programmatic and historical purposes" are official records. The flowchart also states that supporting materials may include drafts, annotations, reports, raw data, meeting minutes and telephone logs; however, this was not initially codified in EPA's Records Management Policy. In response to our draft recommendation, the EPA's National Records Management Program (in the Office of Environmental Information) updated Records Schedules 1005 and 1021 in July 2017, to clarify that budget working papers are official agency records.

The EPA documented its final decision (as required by EPA Records Schedule 0299) to no longer request funding for the BEACH Act grant program in its FY 2013 Congressional Budget Justification. In the budget justification, the EPA explained that, for the BEACH Act grants program, "well-understood guidelines are in place and state and local programs have the technical expertise and procedures to continue beach monitoring without federal support." The agency described the grant program as "mature," where there is the possibility of maintaining some of the human health benefits through implementation at the local level without federal support.

However, our review of the documentation maintained by the agency found that the EPA did not keep records demonstrating its analysis of the four criteria, and did not keep records of supporting analyses or materials that fully document and explain the decision-making process. By not documenting the supporting analysis used to make the final budget decision, the agency does not meet the requirements of the Federal Records Act and the EPA's Records Management Policy.

## **Despite EPA's Proposal to Cut BEACH Act Grants, Congress Continues to Provide Funding**

Despite the EPA's proposal to eliminate this grant program since FY 2013, Congress continues to provide the funding for this program, either through continuing resolutions or by including the program in the EPA's budget. Members of Congress have expressed support for continuing funding for the grant program. For example:

- In 2013, 22 members of the House of Representatives sent a letter to the House Appropriations Committee urging the committee "to restore funding for this vital program to the FY 2012 enacted level of \$9.9 million

to ensure that our beaches are clean and safe for all visitors while serving as an economic engine for the many communities on our coast.”

- In 2014, 19 members of the U.S. Senate sent a similar letter to the Senate Appropriations Subcommittee on Interior, Environment and Related Agencies, urging funding of the BEACH Act grant program at \$9.9 million.

Supporters in Congress of the BEACH Act also continue to propose expanding the scope of the act by amending it to include rapid testing methods to detect unsafe levels of pathogens within 2 hours (or less), source identification, and the use of sanitary surveys. In FYs 2015, 2016 and 2017, Congress maintained funding levels for the BEACH Act grant program at approximately \$9.5 million each year.

## **Lack of BEACH Act Grant Funding Could Negatively Impact Grantee Beach Monitoring and Notification Programs**

Since FY 2013, grantees have had to manage and operate their monitoring and notification programs with uncertainty regarding whether there will be BEACH Act grants and, if so, how much funding they will receive. Some grantees said they struggle to attract and retain staff, coordinate monitoring efforts, and explore the expansion of their current means of notification and advanced techniques. For example:

- In Hawaii, staff from the health department said the BEACH Act grant should fund two full-time positions. However, due to the funding uncertainty, they elected to hire fewer than two staff and rely on laboratory support instead. Also, Hawaii officials said that although some monitoring and notification would continue because the state relies heavily on the safety of its beaches, the monitoring frequency would be greatly reduced.
- Beach managers from Washington and Louisiana said that their monitoring and notification programs would likely cease to exist because there are no alternative sources to fund these activities. Further, Louisiana beach officials reported that they are not making purchases beyond those required by contractual obligations.
- Puerto Rico beach officials informed us that without BEACH Act grant funding, monitoring would continue only once every 2 months, and public notification would decrease.



Hawaii State beach program monitoring for pathogens. (EPA OIG photo)

All nine grantees we interviewed indicated their monitoring activities would decline (in the number of beaches monitored and/or in the monitoring frequency) if BEACH Act grants were no longer available. Five of the nine grantees said their monitoring and notification program may cease to exist, as they dedicate some of the grant money to staff salaries to collect samples for analysis. Additionally, seven grantees (Alaska, Alabama, Commonwealth of the Northern Mariana Islands, Maine, New Hampshire, Pennsylvania and Wisconsin) provided us with written responses about the impact of decreased, or lack of, grant funding on their programs. These grantees indicated that their programs would also cease to exist without grant funding, primarily because the grants are the only source of funding available for monitoring and notification.

California's beach program may be the exception, as it is supplemented with significant funding from local county budgets. The federal and state portion of California's beach monitoring funding represents approximately 24 percent of the total cost to nationally monitor beaches each year. Out of the more than \$10 million California counties spend annually to operate their beach monitoring and notification programs, approximately \$1.8 million is allocated from the state budget and \$500,000 from the BEACH Act grant.

We believe state programs have knowledgeable staff and labs to monitor indicator bacteria levels in coastal recreation waters using traditional culture-based methods. However, grantees we interviewed have not yet employed advancements in monitoring and analytical techniques due to funding issues. New rapid testing methods provide water sample results faster than traditional methods, but require a significant investment of resources to establish. Additionally, predictive models can provide early warning of potentially unsafe swimming conditions, especially on days when the beach program does not sample at the beach. However, along with historical monitoring data, developing these beach-specific models requires technical experts/statisticians and modeling and statistical software.

According to the agency, this uncertainty about future funding also affected EPA program staff in the regions and headquarters. The agency did not backfill vacated positions, resulting in the same amount of work performed by fewer staff.

## **Conclusion**

Federal laws and an agency policy require documentation and proper recordkeeping of key budget decisions. By not fulfilling these requirements the agency limits its protection of the interests and rights of the government and the public, preservation of institutional knowledge for key decisions, and fostering of accountability. The absence of documentation for the EPA's decision to request that Congress no longer fund the BEACH Act grant program does not mean the decision was unwarranted or unsupported. However, the absence of documentation increases the risk that an uninformed or unsubstantiated decision was made about the performance of this federal program that seeks to protect the

nations' coastal waters and the health of the public that uses these waters and adjacent beaches for recreation.

## Recommendations

We recommend that the Chief Financial Officer:

4. Based on the agency's National Records Management Program guidance and records schedules, develop and implement an annual checklist or other tool to demonstrate the office's compliance with recordkeeping requirements regarding budget decisions.

We recommend that the Assistant Administrator for Environmental Information and Chief Information Officer:

5. Review and update the agency's Records Management Policy and records schedules, where appropriate, to clarify that drafts, working papers/files, and supporting information are to be maintained as official records to document the agency's decision-making process.

## Agency Comments and OIG Evaluation

The Office of the Chief Financial Officer disagreed with Recommendation 4. The agency suggested alternative language for this recommendation that focused on the agency following applicable budget formulation guidance in OMB Circular A-11 and EPA Records Schedule 1005. We did not accept this suggested language. This recommendation is unresolved with resolution efforts in progress.

The Office of Environmental Information agreed with Recommendation 5 and provided corrective actions with completion dates. As noted in this chapter, the office revised two records schedules on July 31, 2017, in response to our discussions with the National Records Management Program. The Office of Environmental Information plans to revise the language in EPA Records Management Policy CIO 2155.3 by the end of the second quarter of FY 2018. The Office of Environmental Information's completed and planned corrective actions satisfy the intent of this recommendation. This recommendation is resolved pending completion of revisions to the agency's records management policy.

We evaluated the agency's technical comments relevant to this chapter and made changes as appropriate.

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

## RECOMMENDATIONS

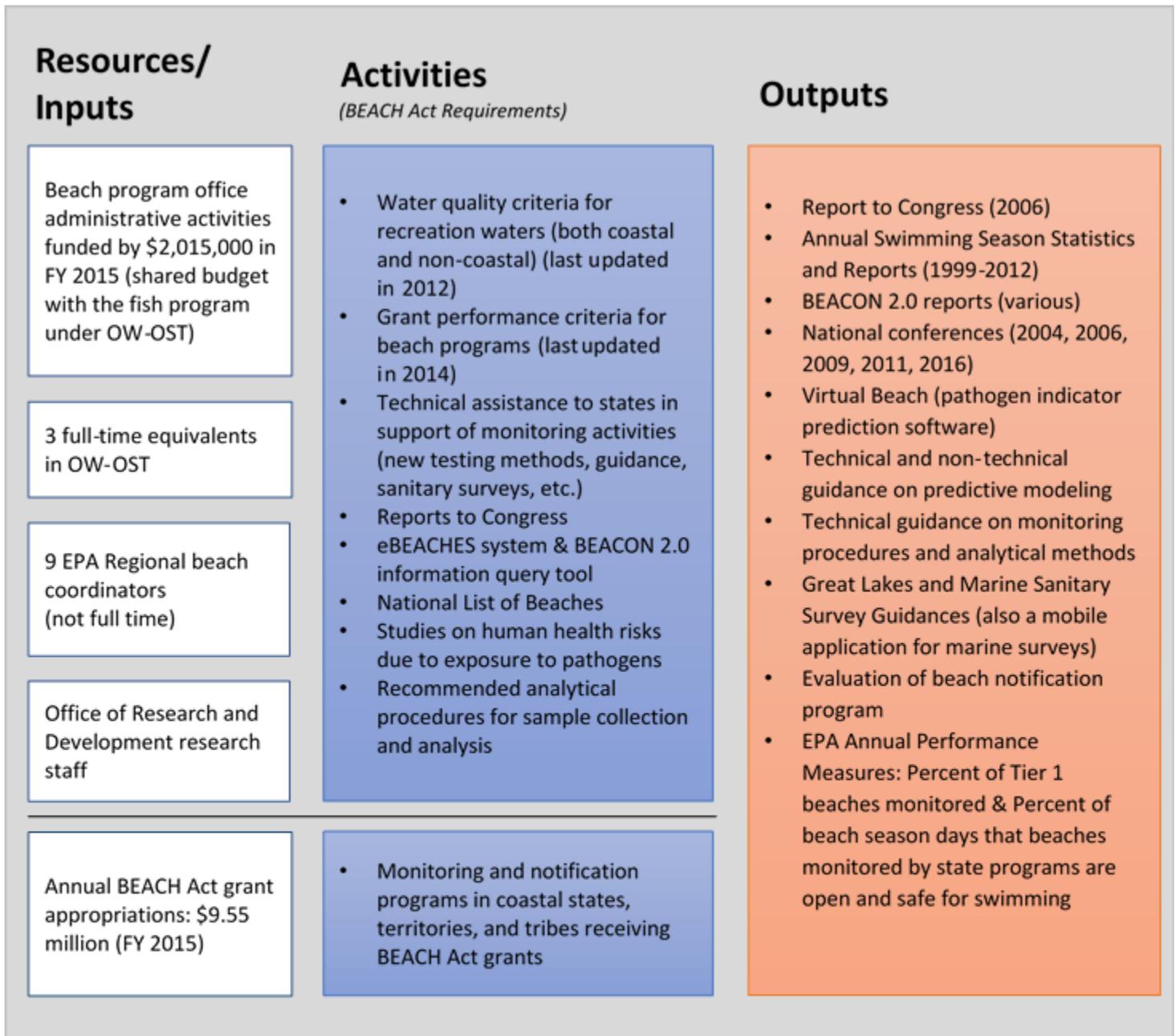
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	12	Submit the mandated reports to Congress on progress under the Beaches Environmental Assessment and Coastal Health Act of 2000.	U	Assistant Administrator for Water		
2	12	In consultation with the Associate Administrator for Policy, review and update, as appropriate, the controls for ensuring mandated reports—such as for the Beaches Environmental Assessment and Coastal Health Act of 2000—are identified, tracked and submitted.	R	Associate Administrator for Congressional and Intergovernmental Relations	3/30/18	
3	13	In consultation with the Associate Administrator for Congressional and Intergovernmental Relations, update the Action Development Process to clarify the process for elevating and resolving disagreements related to comments from the Office of Management and Budget on draft reports to Congress, such as the report on the Beaches Environmental Assessment and Coastal Health Act of 2000.	R	Associate Administrator for Policy	3/30/18	
4	19	Based on the agency's National Records Management Program guidance and records schedules, develop and implement an annual checklist or other tool to demonstrate the office's compliance with recordkeeping requirements regarding budget decisions.	U	Chief Financial Officer		
5	19	Review and update the agency's Records Management Policy and records schedules, where appropriate, to clarify that drafts, working papers/files, and supporting information are to be maintained as official records to document the agency's decision-making process.	R	Assistant Administrator for Environmental Information and Chief Information Officer	3/30/18	

<sup>1</sup> C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

## EPA Beach Program Logic Model



## Outcomes

**BOLD** Outcomes with impacts on other CWA programs

## Impacts

### Short Term (1-3 years)

Increased ability/capacity of state programs to monitor coastal recreation water quality

Increased ability/capacity of state programs to notify the public of risks at coastal beaches

Increased public awareness of health risks at coastal beaches

**Implementation of recreation water quality criteria (and revised criteria) by states (CWA §304)**

**Potential identification of pollution sources (CWA §402 and CWA §319)**

**Integrated reports** for water quality assessment information (CWA §305(b)/ CWA §303(d))

### Long Term (4-6 years)

**Designating waters as impaired** (primarily for indicator bacteria under the 2012 Recreation Water Quality Criteria) (CWA §303(d))

**Developing total maximum daily loads for impaired waters (CWA §303)**

**Potential remediation of pollution sources** (e.g., through other EPA programs like the Great Lakes Restoration Initiative, as well as local and state actions)

**Revision of point source permits based on new information (CWA §402)**

Change in public behavior at beaches when advisory is present

**Improved coastal recreation water quality**

*BEACH Act goal*

**Decreased incidences of public illnesses in coastal recreation waters**

*Former EPA performance measure*

Stakeholders,  
Assumptions,  
External  
Factors &  
Limitations  
(next page)

### Stakeholders:

- Beachgoers.
- Health and/or environmental agencies of 38 coastal states/tribes/territories receiving EPA BEACH Act grants.
- Other federal agencies that may manage beaches or use beach data, e.g., National Oceanic and Atmospheric Association, National Park Service, U.S. Geological Survey, Fish and Wildlife Service, and Center for Disease Control.
- Local governments.
- Academic institutions and other non-governmental organizations.
- Tourist associated businesses/industry.
- Non-U.S. governmental agencies.

### Assumptions:

- BEACH Act cannot be thought of in a vacuum; it should be thought of in context of the CWA's overarching goals.
- The program focuses on water quality AND public health (per BEACH Act and CWA goals/sections).
- EPA and states/territories/tribes program staff split time with other water related public health programs, e.g., the fish program, water quality standards program, etc.
- EPA's ability to demonstrate water quality improvements depends on other CWA programs (e.g., point source, nonpoint source, total maximum daily loads, etc.), as well as state and local initiatives to remediate sources.
- New recommended methods for sampling and lab techniques may result in the need for programs to rebuild their capacity with both new equipment and new skill sets/training.
- Without grant money, EPA is not required by the BEACH Act to implement beach programs for states.
- EPA cannot require states to continue beach monitoring and notification programs if there is no grant

### External Factors and Limitations:

- Length of time between taking the water sample and issuing notification does not provide public with information about current conditions.
- Budget set by Congress (years of continuing resolutions and appropriations of grant money despite EPA not requesting funding for the grant program since FY 2012).
- EPA's intent to defund the beach grants creates uncertainties in the program.
- Between 2004 and 2015, several bills introduced in Congress to amend the BEACH Act included additional requirements (amendments never passed).
- Cost of newer rapid methods, lab set up, and training can be prohibitive.
- Beach-related Great Lakes Restoration Initiative grants contribute to achieving goals of BEACH Act.
- Inability to track/identify recreation water-related illnesses.
- Political/economic influence at local level to issue advisories and/or close beaches.

## Prior Reports

On May 1, 2007, GAO reported in Report No. [GAO-07-591](#), *Great Lakes: EPA and States Have Made Progress in Implementing the BEACH Act, but Additional Actions Could Improve Public Health Protection*, that while increased monitoring had helped state and local officials determine which beaches were more likely to be contaminated, in most cases local officials did not know the causes of contamination. Consequently, state and local officials had not been able to take actions to address those causes. The BEACH Act grants cannot be used by localities to identify specific sources of contamination or to take actions to mitigate the problem. GAO recommended that the EPA:

1. Revise the formula for distributing BEACH Act grants to better reflect the states' varied monitoring needs.
2. Establish a definitive time line for publishing new or revised water quality criteria for pathogens and pathogen indicators.
3. Provide states and localities with specific guidance on monitoring frequency and methods and public notification.

According to GAO, all three recommendations are “closed and implemented.” GAO also proposed for congressional consideration that Congress provide the EPA with some flexibility in awarding BEACH Act grants to allow grantees to undertake limited research to identify specific sources of contamination at monitored beaches and certain actions to mitigate these problems, as specified by the EPA.

On March 31, 2014, the EPA OIG noted in Report No. [14-P-0155](#), *Quick Reaction Report: EPA Oversight Needed to Ensure Beach Safety in U.S. Virgin Islands*, that the U.S. Virgin Islands was in violation of its agreement under the BEACH Act grant with the EPA. The U.S. Virgin Islands failed to monitor 23 beaches on two islands between February 3–16, 2014, which posed potential health hazards to humans and may have endangered the environment. Additionally, the OIG concluded that the public notification provided may not be adequate for tourists visiting the islands (i.e., they may not read the local newspapers). The OIG recommended that the Region 2 Regional Administrator take steps to ensure beach monitoring and public notification meet the EPA's guidelines, and determine whether the program can provide continuous beach monitoring and adequate public notification. These recommendations were completed by the agency in 2014.

On August 18, 2016, the EPA OIG noted in Report No. [16-P-0275](#), *EPA Has Not Met Certain Statutory Requirements to Identify Environmental Impacts of Renewable Fuel Standard*, that the Office of Research and Development issued an initial report to Congress for the Renewable Fuel Standard Program but did not issue subsequent triennial reports to Congress. The primary reasons for not providing subsequent reports related to accommodating competing research priorities, reductions to the office's budget, and the shortness of the 3-year reporting cycle for significant scientific advances to occur. The OIG concluded that the statutory requirement to complete the report does not hinge on annual earmarked funding and the lack of scientific

advances does not eliminate the agency's reporting requirement. The OIG recommended that the Assistant Administrator for Research and Development provide triennial reports to Congress on the impacts of biofuels as required by the Energy Independence and Security Act. The Office of Research and Development agreed with this recommendation and planned to complete corrective actions in December 2017.

## ***Agency Response to Draft Report***

OFFICE OF WATER

October 30, 2017

### **MEMORANDUM**

**SUBJECT:** Response to Office of Inspector General Draft Report NO. OPE-FY15-0056 – EPA Should Report to Congress on BEACH Act Progress as Required, and Fully Document Budget Decisions, dated September 12, 2017

**FROM:** Michael H. Shapiro  
Acting Assistant Administrator  
Office of Water

Troy M. Lyons  
Associate Administrator  
Office of Congressional and Intergovernmental Relations

Samantha Dravis  
Associate Administrator  
Office of Policy

David Bloom  
Acting Chief Financial Officer  
Office of the Chief Financial Officer

Steven Fine  
Acting Assistant Administrator, Acting Chief Information Officer  
Office of Environmental Information

**TO:** Carolyn Copper  
Assistant Inspector General  
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the agency's overall position, along with its position on each of the report recommendations. For those report recommendations with which the agency agrees, we have provided high-level intended corrective actions and estimated completion dates to the extent we can. For those report recommendations with which the agency does not agree, we have explained our position and proposed alternative recommendations. For your consideration, we have included a Technical Comments Attachment to supplement this response.

## **AGENCY’S OVERALL POSITION**

EPA appreciates being provided with the opportunity to share the most current information on how grants under the Beaches Environmental Assessment and Coastal Health Act of 2000 assist states, territories, and tribes in monitoring water quality of coastal recreation waters and notifying the public of contamination events. This response includes comments from the Offices of Water, Congressional and Intergovernmental Relations, Policy, Chief Financial Officer, and Environmental Information.

EPA general agrees with the findings in this report, pending suggested changes noted in this memo and in a Technical Comments Attachment. We have concerns with some of the OIG’s recommendations and believe modifications are needed. Adjusting the first and fourth recommendations as suggested will result in more meaningful corrective actions.

We appreciate your support for our marine sanitary survey mobile application and recreational waters conferences, which are included in the “Noteworthy Achievements” section of the report.

## **AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS**

### Agreements

No.	Recommendation	EPA Office	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
2	Review and update, as appropriate, the controls for ensuring mandated reports—such as the Beaches Environmental Assessment and Coastal Health Act of 2000—are identified, tracked and issued.	OCIR	OCIR will continue to coordinate with OP and OCFO to review the controls for ensuring mandated reports are identified, tracked and issued. As part of this process OCIR will reissue the guidance to the program offices on using the ADP Tracker.	Q2 FY18
3	Update the Action Development Process to clarify the process for elevating and resolving disagreements related to comments from the Office of Management and Budget on draft reports to Congress.	OP	OP will make appropriate changes to the ADP guidance to clarify this issue	Q2 FY18

No.	Recommendation	EPA Office	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
5	Review and update the agency's Records Management Policy and records schedules, where appropriate, to clarify that drafts, working papers/files, and supporting information are to be maintained as official records to document the agency's decision-making process.	OEI	<p>Two records schedules were revised as a result of NRMP's meetings and conversations with OIG during the audit period. EPA Records Schedule 1005 – Financial Management was revised to include “working papers” in the disposition instructions for item a. EPA Records Schedule 1021 – Planning and Resource Allocation was revised to include a bullet under the guidance section describing “Budget working papers as records.”</p> <p>EPA Records Management Policy CIO2155.3 will be revised to include language stating: Drafts, working papers/files, and supporting information of substantive program and mission related areas are to be maintained as records to document the Agency's decision-making processes.</p>	<p>EPA Records Schedules 1005 – Financial Management and 1021 – Planning and Resource Allocation were revised 07/31/2017</p> <p>Interim EPA Records Management Policy Q2 FY18</p>

## Disagreements

**Recommendation 1:** “Fulfill appropriate legal reporting requirements for the EPA under the Beaches Environmental Assessment and Coastal Act of 2000 for the 2018 reporting cycle and every 4 years afterwards, pending continued program funding and report expectations from the Office of Management and Budget.”

**Response:** EPA disagrees with the recommendation. EPA understands the statutory requirements and benefits of reporting to Congress, but as you noted in the draft report on page 12, the report to Congress on the BEACH Act grant program is on OCIR’s list of statutorily required reports that the Agency is recommending to be terminated. Therefore, EPA considers it premature to initiate another report unless and until OMB responds that the report is necessary.

**Proposed Alternative:** We suggest the OIG revise the recommendation to say the following: “Upon notification from the Office of Management and Budget that a report to Congress is necessary, fulfill appropriate legal reporting requirements for the EPA under the Beaches Environmental Assessment and Coastal Act of 2000 for the 2018 reporting cycle and every 4 years afterwards, pending continued program funding and reporting expectation from the Office of Management and Budget.”

**OIG Response:** The agency has submitted one report to Congress in the 16-year history of the BEACH Act grants program. Given that grants awarded in FY 2017 will be used by grantees in the 2018 swim season, the agency must prepare and submit the mandated reports to Congress. During the final report review process, we revised the draft recommendation to make it clearer that the agency should submit mandated reports to Congress on progress under the BEACH Act of 2000.

**Recommendation 4:** “Based on the agency’s National Records Management Program guidance and records schedules, develop and implement an annual checklist or other tool to demonstrate office’s compliance with recordkeeping requirements regarding budget decisions.”

**Response:** The OCFO strongly disagrees with the OIG’s assertion that there was an “absence of documentation for the decision to eliminate the BEACHES program.” OCFO has provided records of the decision-making processes in the form of budget guidance issued once senior leadership made decisions. The agency has followed the applicable budget formulation guidance contained in OMB Circular A-11 as well as recordkeeping requirements found within EPA Records Schedule 1005 – Financial Management.

OCFO believes that the OIG’s focus on the BEACHES program decisions in isolation rather than as part of a difficult decision-making process across programs fundamentally misrepresents the Federal Budget formulation process. The question is not whether a particular program is worthy but what difficult choices and tradeoffs the agency must make when it looks at how best to use its resources across many programs.

On page 16 of the draft report, OIG acknowledges that the agency “documented its final decision” but takes issue with documentation for its analysis” and notes examples of

documentation. None of these are required by budget formulation guidance contained in OMB Circular A-11.

**OIG Response:** OMB Circular A-11 does not specifically direct agencies to keep records of working papers, but it also does not explicitly say that agencies are not required to keep these records. The intent of the recommendation is to improve recordkeeping of budget-related decisions in the future as the agency continues to make these types of difficult decisions. This is especially relevant given the recent revisions made to EPA Records Schedules 1005 and 1021, as well as the upcoming revisions to the EPA Records Management Policy in response to Recommendation 5.

**Proposed Alternative:** We suggest the OIG revise the recommendation to say the following: “The agency will follow the applicable budget formulation guidance contained in OMB Circular A-11 as well the Agency recordkeeping requirements found with EPA Records schedule 1005 on Financial Management.”

**OIG Response:** The OIG disagrees with the suggested revisions to the recommendation language. This recommendation is unresolved with resolution efforts in progress.

#### Actions and Timeframes to Respond to OIG Recommendations

No.	Recommendation (including proposed revision)	EPA Office	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Upon notification from the Office of Management and Budget that a report to Congress is necessary, fulfill the appropriate legal reporting requirements for the EPA under the Beaches Environmental Assessment and Coastal Act of 2000 for the 2018 reporting cycle and every 4 years afterwards, pending continued program funding and reporting expectations from the Office of Management and Budget.	OW	Submit 2018 Report to Congress	Q1 FY19

No.	Recommendation (including proposed revision)	EPA Office	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
4	The agency will follow the applicable budget formulation guidance contained in OMB Circular A-11 as well as the Agency recordkeeping requirements found within EPA Records Schedule 1005 on Financial Management	OCFO	Follow the applicable budget formulation guidance contained in OMB Circular A-11 and Agency recordkeeping requirements found within EPA Records Schedule 1005 on Financial Management.	Q1 FY19

**CONTACT INFORMATION**

If you have any questions regarding this response, please contact Steven Moore, Audit Follow-up Coordinator of the Office of Water at 202-564-0992 or moore.steven@epa.gov or one of the following Audit Follow-up Coordinators:

Office of Water: Steven Moore, 202-564-0992, moore.steven@epa.gov

Office of Congressional and Intergovernmental Relations: Latonia Cheatham-Strickland, 202-564-7930, cheatham-strickland.latoniam@epa.gov

Office of Policy: Michael Benton (OA), 202-564-2860, benton.michael@epa.gov

Office of the Chief Financial Officer: Bob Trent, 202-566-0983, trent.bobbie@epa.gov

Office of Environmental Information: Jennifer Judd, 202-566-9993, judd.jennifer@epa.gov

Attachment: Technical Comments

## ***Distribution***

The Administrator  
Deputy Administrator  
Chief of Staff  
Chief of Operations  
Deputy Chief of Operations  
Chief Financial Officer  
Agency Follow-Up Coordinator  
General Counsel  
Assistant Administrator for Water  
Assistant Administrator for Environmental Information and Chief Information Officer  
Associate Administrator for Congressional and Intergovernmental Relations  
Associate Administrator for Policy  
Associate Administrator for Public Affairs  
Associate Chief Financial Officer  
Deputy Assistant Administrator for Water  
Principal Deputy Assistant Administrator for Environmental Information and  
Deputy Chief Information Officer  
Principal Deputy Associate Administrator for Congressional and Intergovernmental Relations  
Deputy Associate Administrator for Policy  
Audit Follow-Up Coordinator, Office of the Administrator  
Audit Follow-Up Coordinator, Office of Water  
Audit Follow-Up Coordinator, Office of Environmental Information  
Audit Follow-Up Coordinator, Office of the Chief Financial Officer  
Audit Follow-Up Coordinator, Office of Congressional and Intergovernmental Relations  
Audit Follow-Up Coordinator, Office of Policy