

ENFORCEMENT PODCAST TRANSCRIPT

Jeff: I'm Jeffrey Lagda with the U.S. Environmental Protection Agency's Office of Inspector General. Chuck Sheehan, the EPA's Deputy Inspector General, is here with me to talk about the OIG's report titled "Resource Constraints, Leadership Decisions, and Workforce Culture Led to a Decline in Federal Enforcement." This report concludes a performance audit that examined trends in EPA-led enforcement actions and results from fiscal years 2006 through 2018, as well as the key factors contributing to these trends. Why don't we start at the beginning? Tell me, Chuck, why was this audit initiated?

Chuck: The EPA's mission is to protect human health and the environment. Under that umbrella, the EPA must ensure that regulated entities, such as wastewater treatment plants and oil refineries, comply with environmental statutes. To achieve this, the EPA reports to the public each year enforcement outputs, such as the number of case initiations and concluded enforcement actions, and enforcement outcomes, such as penalties, injunctive relief, supplemental environmental projects, and environmental benefits. And this reporting by EPA on its enforcement is very important, because declines in the EPA's enforcement activities may expose the public and the environment to harmful pollutants. Now this is where the Office of Inspector General comes in. When most people think of OIG, they immediately think of the independent organization that looks at fraud, waste, and abuse at EPA. However, we are also mandated to assess EPA's program efficiency and effectiveness. To that end, the purpose of this OIG audit was to specifically determine the trends in EPA-led enforcement actions and results, as well as the factors leading to the trends, to see how well the EPA has handled its enforcement responsibilities over the past 13 years. We wanted to cover multiple administrations and a variety of budget scenarios in our scope to tease out the key factors driving enforcement results. By the way, we're also talking about the second of two reports addressing these objectives. Our first report, issued in March 2020, described national trends in EPA-led enforcement activities, actions, and results, whereas this report covers key factors contributing to the trends.

Jeff: You mentioned statute trends. Which environmental statutes does the EPA implement enforcement programs for?

Chuck: Well, there are 12 different federal environmental laws covered by the EPA. They include the Clean Air Act, Safe Drinking Water Act, Toxic Substances Control Act, and the Clean Water Act.

Jeff: Of course, ensuring compliance with environmental laws and regulations is critical to accomplishing the EPA's mission of protecting human health and the environment. How does the EPA track that companies, municipalities, and others are complying with these laws and regulations?

Chuck: Environmental enforcement involves a complicated process of events and players, with federal, state and tribal government agencies, regulated entities, and the public working toward compliance with environmental laws and regulations. The process often starts with providing compliance assistance to help regulated entities, which can be people, companies, or municipalities, learn how to comply. Compliance monitoring, such as inspections, helps the EPA to know whether these entities are complying. If they're not, the EPA may take enforcement actions to get a regulated entity back into compliance. Returning to compliance ultimately results in human health and environmental benefits because excess pollution is no longer released to communities and ecosystems. EPA enforcement actions also can result in a combination of financial costs to the noncomplier, like injunctive relief and penalties; and supplemental environmental projects, where the noncomplier agrees to take on projects that will benefit the environment and communities directly affected by the pollution.

Jeff: Regarding that enforcement process, can you talk a little more about enforcement actions?

Chuck: Yes, formal enforcement actions are taken by the EPA, the Department of Justice, or an authorized state to address instances of noncompliance typically identified through inspection findings, tips, or self-reported violations. Informal enforcement actions include warning letters and notices of violation, while formal enforcement actions include administrative orders and judicial actions. It's important to emphasize that our report did not address enforcement actions taken by states or tribes authorized to implement enforcement programs on EPA's behalf; we focused exclusively on EPA's actions.

Jeff: Okay, let's move into the OIG's findings from its audit of EPA's enforcement. What was the major finding?

Chuck: We found that national-level, regional-level, and statute-specific EPA compliance monitoring activities, enforcement actions, and most enforcement results, including output and some outcome measures, generally declined from fiscal years 2007 through 2018. What do these declines mean? The decline in inspections and other compliance monitoring activity means that, over time, the Agency and the public had increasingly less knowledge about compliance with environmental statutes, and as such, they had less information about whether facilities emitted pollutants that could be harmful to people or the environment. Furthermore, the decline in enforcement actions that included penalties or injunctive relief could mean that the EPA was not adequately holding violators accountable, not to mention that those violators could gain an unfair competitive advantage over other regulated entities that comply with environmental regulations.

Jeff: So, the audit found a decline in enforcement results over a period of time. What happened at the EPA that contributed to the decline?

Chuck: That's the million-dollar question, Jeff. In our report, we determined that a decline in funding for EPA's enforcement program drove the observed declining enforcement trends. Congress appropriated 18 percent less funding for EPA enforcement in FY 2018 than in FY 2006 when comparing inflation-adjusted dollars. The resulting decline in the number of EPA enforcement personnel led to fewer compliance monitoring activities and concluded enforcement actions.

Jeff: You mentioned a decline in EPA's enforcement personnel. Would you elaborate on that?

Chuck: Sure, the EPA lost 675 enforcement staff positions, which included inspectors, from fiscal years 2007 through 2018. This scenario forced many inspectors to take on additional duties, such as case development, which consumed time that they would otherwise have used to conduct inspections and other compliance monitoring activities. Decreased funding for the Agency and the enforcement program also impacted enforcement outputs, such as the number of case initiations and concluded enforcement actions, by constraining the funds available for enforcement support.

Jeff: In terms of staffing, what could the EPA have done better?

Chuck: Workforce plans help establish staffing and agency priorities so that federal agencies can operate efficiently toward meeting their goals. In August 2020 as part of a separate OIG assignment, we reported that the EPA had not met the federal workforce planning requirements set forth by the Office of Personnel Management. In this enforcement report, we recommended that the assistant administrator for enforcement and compliance assurance assess the needs of the EPA's enforcement program by completing a workforce analysis to determine the level of staffing necessary to achieve and maintain a strong enforcement presence in the field that protects human health and the environment.

Jeff: Earlier, you cited "leadership decisions" as one of the reasons behind EPA's decline in enforcement. Would you please talk a little more about that?

Chuck: Yes, I had referenced that support for enforcement by EPA management can have an impact on enforcement culture and enforcement trends. Let me give you an example: In 2017, EPA changed its enforcement policy for New Source Review under the Clean Air Act. New Source Review permits are meant to protect air quality when factories, boilers, and power plants are newly built or modified. Under the 2017 policy, EPA stopped pursuing certain types of New Source Review cases. Regarding enforcement trends, we found that some policies required more official approvals during the enforcement process. One required staff to alert their regional administrators before referring matters to the Department of Justice, which given the perceived decline in leadership support for enforcement

during that time, caused some staff to perceive that there should be fewer referrals to DOJ. Keep in mind that referrals to DOJ are an important indicator of future enforcement results because they can lead to enforcement actions with large penalties and injunctive relief values.

We also found that, given limited resources and a shrinking number of personnel, EPA staff, managers, and officials made strategic choices regarding the types of noncompliance to monitor and the types of enforcement cases to pursue. For example, the OIG found that a strategic shift, which began during the middle of the first decade of the 2000s, refocused Agency enforcement resources on bigger cases against the most serious violators that significantly impacted human health and the environment.

In 2017, the Agency implemented two other strategic shifts: one that emphasized deferring to state programs to take many enforcement actions, and the other focused on emphasizing compliance assistance to return violators to compliance, rather than bringing enforcement actions with monetary penalties. All of these strategic shifts influenced enforcement trends, with the emphases on bigger enforcement cases, compliance assistance, and deference to states, all leading to fewer EPA-led formal enforcement actions initiated and concluded.

Now why is this trend relevant to note? Well, when facility operators recognize that the EPA is conducting fewer compliance monitoring activities and taking fewer enforcement actions in their geographic areas or industry sectors, they may risk noncompliance under the assumption that they are unlikely to become subject to EPA inspections or enforcement actions.

Jeff: Another major finding in the OIG's report was that the EPA should develop and track additional enforcement measures and improve its reporting of annual enforcement results. Would you discuss this finding in more detail?

Chuck: Yes, we found that EPA did not track some key parts of the enforcement process, such as baseline rates of noncompliance and the number of compliance assistance activities. Without this type of information, the Agency cannot assess whether it is making progress in improving compliance overall.

Additionally, we found that when the EPA issued its annual enforcement reports, the Agency generally did not provide enough context about the reported measures. The Agency didn't fully describe the impact of its enforcement activities on human health and the environment. When the EPA tracks and reports estimated commitments toward environmental benefits that result from enforcement actions, it doesn't provide much explanation about the toxicity of the pollutants being removed. This can really matter. For example, commitments to remove one pound of non-toxic sediment is reported the same way as a commitment to remove one pound of a toxic pollutant, such as mercury and lead. We think that the EPA could explain that while mercury in air and lead in water may represent smaller

cleanup commitments in pounds than sediment commitments, they also represent higher environmental benefits because of their higher toxicity to human health and impact on the environment. Providing such context in future annual reports would increase transparency of EPA-led enforcement activities and actions.

Based on these findings, we recommended, among other steps, that EPA incorporate additional enforcement information and data into future reports on annual enforcement results to provide context for compliance monitoring activities conducted by the Agency and the estimated environmental benefits achieved through Agency enforcement actions.

We also recommended that the EPA give the public more information by developing a public dashboard displaying EPA-led enforcement activities and actions. This would provide a platform to deliver additional context for steps in the enforcement process.

Jeff: As we near the end of this conversation, Chuck, what are your final thoughts?

Chuck: I'd like to reiterate what I stated at the beginning, which is that the OIG has a statutory responsibility to increase program efficiency and effectiveness at the EPA, as well as look into potential waste, fraud, and abuse. As required, we will continue to report our work to the EPA and to Congress.

Jeff: For our listeners, anyone who suspects waste, fraud, or abuse at the EPA should contact the OIG hotline. The hotline can be reached toll-free at 888-546-8740 or by email at oig-UNDERSCORE-hotline@epa-DOT-gov.

You know, Chuck, it's been great having you talk with me today!

Chuck: It's been a pleasure. Thank you and thanks to all listeners out there.

Jeff: The audit report that the EPA Deputy Inspector General and I just discussed is more than 170 pages long and contains a lot of information. This podcast skims the surface. We encourage anyone interested in the details to read the report in its entirety. You can find it, and learn more about the Office of Inspector General's work, on our website at www-DOT-epa-DOT-gov-FORWARD SLASH-oig. And be sure to follow us on Twitter at EPAOIG.