

STATUS UPDATE

Dispute Resolution for the Office of Inspector General Report No. 21-P-0132,
“Resource Constraints, Leadership Decisions, and Workforce Culture Led to a Decline in Federal
Enforcement”,
dated May 13, 2021

BACKGROUND

On 5/13/2021, the OIG issued a final report containing eight recommendations for OECA. Three recommendations remained unresolved. In summary they are:

- Recommendation 1: *EPA will assess the needs of the Agency’s enforcement program by completing the following workforce analyses; (details included below)*
- Recommendation 2: *OECA will integrate the results of its workforce analysis; and*
- Recommendation 5: *OECA will:*
 - a. *Define EPA-issued informal enforcement actions.*
 - b. *Reporting annually on compliance assistance views for EPA’s Compliance Assistance Centers.*

As a result, the OIG and OECA entered the dispute resolution process. On 10/13/2021, the CFO facilitated a discussion between the OIG and OECA to reach resolution on these unresolved recommendations. At the end of this meeting resolution had not been achieved on any of the unresolved recommendations, but there was agreed follow-up from this meeting.

Note:

- *The OIG agreed at the Oct 2021 meeting to provide a list of what they view as the key elements of a workforce analysis to the agency.*
- *No information was transmitted by the OIG despite follow-up by the Controller with the AIG for Audits.*

On 2/23/2023, principal EPA participants from OECA, OCFO (IO/OC/OB), and OMS met to discuss an agency approach to revised corrective actions. OECA and OMS agreed to draft revised corrective action language to include the following actions:

- Recommendations 1 and 2:
 - OECA will participate fully in the OMS-led Agency-wide succession planning project.
 - OECA will submit an OECA succession management plan with elements requested by OIG.
- Recommendation 5:
 - OECA will define EPA-issued informal enforcement actions.
 - Reporting annually on compliance assistance views for EPA’s Compliance Assistance Centers.

OECA and OMS agreed to collaborate and submit the formal revised corrective actions in approximately 2 weeks.

- Upon receipt, the Controller will engage the Office of Audits AIG to present the proposed corrective actions.
- If the corrective actions are not accepted by the OIG, a follow-up meeting between principal agency offices and OIG will be scheduled.

NEXT STEPS

- On 3/31/23, OECA submitted revised corrective actions with OMS inputs.
 - Proposed corrective actions align with those discussed on 2/13/23.
 - Actions for Recommendation 5 are listed as complete.
 - An additional narrative is included to accompany Recommendation 5.
- The Controller will engage the OIG and provide the OECA proposal for review and concurrence.

Recommendations with Revised Corrective Actions					
No.	Recommendations	Revised Corrective Action (Dispute)	OIG Response to Revision: 8/18/2021	OECA's Final Revised Corrective Action (March 2023)	Planned Due Date
1.	Assess the needs of the Agency'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.	<p>EPA will assess the needs of the Agency's enforcement program by completing the following workforce analyses:</p> <ul style="list-style-type: none"> - OECA will engage with the Regions at several points during the year to ensure that existing resources align with priorities. This engagement may occur through preparation and analysis of Regional Strategic Plans, one-on-one discussions between OECA senior leadership and Regional leadership, and national Senior Enforcement Managers' Meetings. - OECA will engage with Regional senior leadership on a regular basis to discuss program implementation, including resource gaps. Where appropriate, Regions or HQ may lend expertise to a Region with a resource gap in a priority area. - The Assistant Administrator for OECA and the Principal Deputy Assistant Administrator for OECA 	<p>For Recommendations 1 and 2, our position remains that a full workforce analysis is necessary to truly understand current and future workforce needs.</p> <p>OIG states in final report OECA's response is a short-term strategy for mitigating the impact of resource declines on enforcement trends. Workforce planning would allow OECA to identify and reduce gaps in its capacity to implement statutory enforcement responsibilities.</p>	<p>A) OECA will participate fully in the OMS-led Agency-wide succession planning project and will submit an OECA-wide succession management plan by the OMS deadline of September 29, 2023. The plan will include all components required by the Agency, including following:</p> <ul style="list-style-type: none"> • Workforce Profile and Demand Analysis: Overview of demographic information, attrition trends, organizational culture, and workforce challenges • Key Competencies: Skills needed to succeed in the organization's leadership and other critical positions • Skills Gap Analysis: Office-level skill needs assessment results and findings • Gaps Closure Plan: Specific steps to be taken, by whom, and when • Execution & Monitoring: Metrics, outcomes, and impacts to assess progress toward closing skill gaps <p>B) OECA will submit an updated succession management based on</p>	<p>9/30/2023</p> <p>12/29/2023</p>

		will engage with the Regional Administrators and Deputy Regional Administrators on budget formulation. Where new resources are identified, OECA and Regional leadership will conduct a high-level needs assessment to inform distribution of any such resources provided through the budgetary process.		guidance provided by OHR.	
2	Integrate the results of the workforce analysis into the Office of Enforcement and Compliance Assurance’s annual and strategic planning processes.	OECA will integrate the results of its workforce analysis articulated in Recommendation 1 in its annual and strategic planning processes.		See proposed corrective action from recommendation 1	4/1/2024
5.	Establish additional measures for Agency-led compliance assistance activities and informal enforcement actions and include these new measures in future annual enforcement results reports with the appropriate context.	1. Defining EPA-issued informal enforcement actions. 2. Reporting annually on compliance assistance views for EPA’s Compliance Assistance Centers and the number of Compliance Advisory/Enforcement Alert produced for that year, both with the context as necessary	For Recommendation 5, we found the planned corrective actions to be partly responsive. Corrective actions for recommendation 5 should include measures for annual reporting on informal enforcement actions for the proposed corrective actions to be considered fully responsive to our recommendation.	*Additional information below. 1.a. Define key action categories, (“informal action,” “formal action,” and “other action”) used in EPA’s enforcement program. 1.b. Review the existing definitions for formal and informal actions in our compliance and enforcement databases and related data dictionaries and update as necessary to ensure consistency with the current definitions for formal and informal actions.	Completed -12/21/22 (Tools document) 1/31/2024 Completed – 12/2022 (Enforcement and Compliance Annual Results)

				<p>2. Report annually on compliance assistance views for EPA’s Compliance Assistance Centers and the number of Compliance Advisory/Enforcement Alert produced for that year, both with the context as necessary.</p>
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- CORRECTIVE ACTION 5:

The leadership of the prior Administration undertook an effort to measure and report all informal enforcement actions into EPA’s national enforcement and compliance databases (Databases). This effort proved to be a significant diversion of scarce enforcement resources with little to no benefit. Therefore, we maintain that measuring and reporting all informal enforcement actions is not a wise expenditure of resources. Further, we have found that when a measure and/or reporting requirement is established it signals a priority and expectation for enforcement programs to do more of the activity that is being measured and/or reported. Therefore, if OECA were to follow the OIG recommendation and require the enforcement program to measure and report all informal actions annually, that action would effectively tell the enforcement program to do more informal actions, which is contrary to OECA’s strategic approach to effective enforcement and the protection of communities. It is appropriately the prerogative of OECA and other program offices to decide what to measure and report.

However, we agree with the OIG’s statement in the Enforcement Trends report that it “would increase transparency and provide the public and Congress with a more complete picture of the Agency’s enforcement program” if we “provide context about the types of enforcement activities” (i.e., formal, informal) already reported in our Databases and “the different levels of complexity those activities involved”. As such, we recently issued a document ([Tools document](#)) that defines formal and informal actions used in EPA’s enforcement program and also discusses the different types of enforcement tools, their varying levels of complexity, and which tools are typically used for less serious vs. more serious violations. This document is posted to OECA’s public facing internet page.

Additionally, while the Tools document referenced above directs EPA enforcement staff and data stewards to continue to follow existing reporting instructions for all compliance and enforcement activities that are reported, we could do more to ensure the consistency of data that is reported with the current definitions for formal and informal. As such, we will review the existing definitions for formal and informal actions in our Databases and related data dictionaries and update as necessary to ensure consistency with the current definitions for formal and informal actions.