



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

July 12, 2021

MEMORANDUM

SUBJECT: Response to Office of Inspector General Final Report 21-P-0132 “Resource Constraints, Leadership Decisions, and Workforce Culture Led to a Decline in Federal Enforcement” dated May 13, 2021

FROM: Lawrence E. Starfield
Acting Assistant Administrator

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Date: 2021.07.12
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TO: Sean W. O’Donnell
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 the three outstanding report recommendations and corrective actions.

Agency’s Overall Position

We value the Office of Inspector General’s (OIG) attention to EPA’s enforcement program and appreciate the opportunity to discuss this report with the OIG staff. Enforcement is a critical part of the Agency’s mission, and a strong enforcement program is essential to protecting human health and the environment. We are committed to implementing a robust enforcement program that addresses noncompliance and protects the communities we serve. We are pleased that we have reached an agreement with the OIG on five of the eight recommendations in the report. However, we are not able to reach agreement on Recommendations 1, 2, and 5.

Agency’s Response

The OIG draft report was issued on February 17, 2021. The Office of Enforcement and Compliance Assurance (OECA) submitted a written response and technical comments on March 26, 2021. On April 6, 2021, several representatives from OECA participated in an exit conference with the OIG audit team to discuss the draft report and the recommendations. OECA and the OIG audit team were able to reach an agreement on most of the recommendations and corrective actions at that meeting. We are not in agreement on Recommendations 1, 2, and 5 as discussed below.

Recommendations 1 and 2

In the draft report, the OIG made the following two recommendations with respect to resources:

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. (Recommendation 1)

Integrate the results of the workforce analysis into the Office of Enforcement and Compliance Assurance's annual and strategic planning processes. (Recommendation 2)

In our written response to the draft report and at the meeting on April 6, 2021, OECA offered the following corrective action for Recommendations 1 and 2:

OECA will conduct a high-level needs assessment to inform distribution of any additional resources provided to OECA in the 2022 budget and beyond. This assessment will be considered during future planning discussions.

OECA's proposed corrective action was not accepted, and on May 13, 2021, the OIG released its final report including Recommendations 1 and 2 without change as presented in the draft report. On June 10, 2021, OECA representatives again met with the OIG audit team to further discuss Recommendations 1 and 2. At that meeting, OECA representatives reiterated their concerns with the OIG's recommendations. Additionally, as the FY 2022 President's Budget had recently been released, OECA provided additional information concerning OECA's and the Regional Offices' recent work on budget formulation. OECA, on behalf of itself and the Regions, requested additional resources for the enforcement program and additional resources were requested in the President's Budget. Further, the Acting Assistant Administrator for OECA discussed these new potential resources with the Acting Regional Administrators and reached an agreement on a need-based allocation of new Regional Office FTE.

During the discussions, OECA again offered alternative corrective action language in an effort to resolve the two outstanding recommendations:

(Recommendation 1 proposed corrective action)

EPA will assess the needs of the Agency's enforcement program by completing the following workforce analyses:

- 1. 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.*
- 2. 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.*
- 3. The Assistant Administrator for OECA and the Principal Deputy Assistant Administrator for OECA 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.*

(Recommendation 2 proposed corrective action).

OECA will integrate the results of its workforce analysis articulated in Recommendation 1 in its annual and strategic planning processes.

Based on the meeting with OIG and subsequent emails, it appeared that the OIG audit team believed these revised corrective actions satisfied the recommendations. However, on July 7, 2021, we were informed that our proposed corrective actions were not acceptable to the OIG.

We acknowledge the OIG's finding that many enforcement metrics have declined from FY 2007 to FY 2019 and that enforcement resources have also significantly declined over the same time period. The report also correctly notes that since FY 2006, the size and level of activity of key sectors that EPA regulates has increased, and EPA is working to address the potential concerns from several "emerging contaminants."

We disagree, however, with the report's recommendations to overcome these obstacles by conducting a workforce analysis as contemplated by the OIG. OECA makes regular adjustments to our enforcement program to ensure we are maintaining a solid national enforcement presence and addressing the most serious noncompliance. In essence, we have been conducting gap analyses and making targeted workforce adjustments from year to year. We believe these are more appropriate methods for achieving the goal of aligning our resources to our work.

For example, for the past 10 years, each Region has prepared a confidential Regional Strategic Plan. The plans identify priorities as well as staffing gaps and potential investments/disinvestments. These Regional plans are discussed with OECA senior officials and have led to resource decisions needed to maintain strong programs and alignment with the Agency's priorities. Additionally, senior enforcement leadership in the Regions and Headquarters meet on a regular basis, individually and collectively, to discuss program implementation, including resource gaps. As a result, it is not uncommon for a Region or Headquarters to lend expertise to another Region to fill a resource gap in a priority area. In our experience, workforce analyses are expensive and time-consuming, create discord, and can create a false sense of analytical precision. Rather, as articulated above, we believe that we have consistently made – and can continue to make – targeted workforce adjustments to align our resources to Agency priorities.

More importantly, however, a workforce analysis would not, by itself, provide additional enforcement resources which, as the OIG's report indicates, is the primary cause for the decline in enforcement activity. Additional resources are garnered through the budgetary process initiated through the proposed President's Budget and the final budget enacted by Congress. Importantly, the recently released President's Budget for FY 2022 calls for a significant increase in EPA resources. Among those increases, the President's Budget asks for an increase of 42 FTE for civil enforcement and an increase of 32 FTE for criminal enforcement. The Acting Assistant Administrator for OECA and the Acting Regional Administrators have already formulated a needs-based tentative plan for distribution of the Regional portion of those resources. Once we have an enacted budget, final decisions will be made with respect to allocation of these resources. As discussed with the OIG audit team, OECA maintains its commitment to the corrective actions proposed at the June 10, 2021, meeting as articulated above.

Recommendation 5

In the February 7, 2021, draft report, the OIG made the following recommendation:

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.

In our comments on the draft report and in the April 6, 2021, meeting, we explained that the agency is in the midst of developing a new strategic plan and associated strategic measures. It is critical that the Agency establish measures that track the goals and priorities of this Administration; therefore, it is not appropriate to agree to establish new measures at this point in time as a response to a recommendation from the OIG. Further, with respect to compliance assistance, we also reiterated that OECA did track compliance assistance for many years and did not find it to be helpful to program performance; the data did not enable us to measure the impact on compliance or gauge the benefit of the effort. Given the resource drain from the additional data entry and tracking, OECA's limited resources, and lack of benefit for tracking these activities, we eliminated the requirement to track them. The prior Administration also piloted requirements for Regions to track informal enforcement actions. There, too, the requirement to enter data and track informal interactions proved to be a significant diversion of scarce enforcement resources with no benefit. Therefore, in addition to our desire to establish measures consistent with the Agency's new strategic plan, we maintain that tracking compliance assistance efforts and informal enforcement actions is not a wise expenditure of resources.

In light of these concerns, we offered the following alternative correction action for Recommendation 5:

Conduct an evaluation of OECA performance measures, including compliance assistance and informal enforcement actions.

The OIG's final report included Recommendation 5 without change as presented in the draft report. During the follow-on meeting with the OIG audit team on June 10, 2021, we further explained that research shows compliance assistance to be most effective when the regulated entity is motivated to seek assistance. For these reasons, OECA invests in 17 [Compliance Assistance Centers](#) that support a variety of regulated sectors. In addition to these centers, the enforcement program continues to provide compliance assistance through other efforts, including issuing compliance alerts. In furtherance of our effort to formulate an acceptable corrective action, we offered the following:

- 1. Define EPA-issued informal enforcement actions.*
- 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.*

Again, based on the meeting with OIG and subsequent emails, it appeared that the OIG audit team believed this revised corrective action satisfied the recommendation. However, on July 7, 2021, we were informed that our proposed corrective action was not acceptable to the OIG and the OIG was again returning to its original recommendation that we establish measures for compliance assistance and informal enforcement actions.

It is critical for the Agency to establish clear priorities and valuable measures or metrics associated with those priorities. OECA and the Regional enforcement senior managers are in active discussions about those priorities and measures and are participating in the Agency's overall process to establish them.

Conclusion

OECA has made every effort to devise corrective actions for the three unresolved recommendations in the subject audit. However, we do not believe that it is in best interest of OECA or the Agency to agree to Recommendations 1, 2, and 5 as proffered by the Office of Inspector General. Therefore, we will notify the Office of the Chief Financial Officer of our interest in elevating these issues.

Contact Information

If you have any questions regarding this response, please contact Gwendolyn Spriggs (OECA Audit Follow-up Coordinator) at spriggs.gwendolyn@epa.gov or 202-564-2439.