



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Ongoing Negotiations Regarding Impediments to Full Inspector General Access with the Office of Homeland Security and Importance of Timely Reporting of Employee Misconduct

**Statement of Arthur A. Elkins Jr.
Inspector General**

**Before the Committee on Oversight and Government Reform
U.S. House of Representatives**

April 30, 2015

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Good morning, Chairman Chaffetz, Ranking Member Cummings and members of the committee. I am Arthur Elkins, Inspector General (IG) of the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear before you today. I will discuss two matters. First, I will report on the current status of impediments arising from the role that the EPA has given to a unit within the agency called the Office of Homeland Security (OHS). Second, I will discuss the importance of immediately reporting all employee misconduct to the Office of Inspector General (OIG).

Before I begin, I would like to publicly commend the expertise, dedication, diligence and professionalism of OIG staff—not only at the EPA, but across the federal government—who work hard each day to carry out our very important mission of promoting economy, efficiency and effectiveness, and preventing and detecting fraud, waste and abuse through independent oversight of programs and operations.

Overview of the EPA OIG

The EPA OIG is charged with conducting investigations and audits related to programs and operations at the EPA and the U.S. Chemical Safety and Hazard Investigation Board (CSB). This office operates with a separate budget and decision-making authority, and neither EPA nor CSB senior leaders may prohibit, prevent or obstruct us from conducting our work.

Challenges Regarding EPA's Office of Homeland Security

I will begin with an update regarding OHS. During a September 2014 hearing before this committee, I testified that the EPA had asserted there was a category of activity defined as “intelligence” to which the OIG may have access only subject to the EPA’s granting of permission. This situation impeded the OIG’s ability to investigate threats against EPA employees and facilities, conduct certain misconduct investigations, and investigate computer intrusions. In addition, OHS was conducting investigative activities of its own without any legal authority to do so, thereby interfering with—and in some cases fouling—OIG investigations.

Since that hearing, senior OIG officials have met multiple times with senior agency officials to address a range of issues falling under these general categories. We have reached at least a theoretical agreement on a substantial portion of the issues, although we are at an impasse with regard to a number of crucial points. What we have agreed upon is that there is no category of activity at the EPA to which the OIG does not have unfettered access, as provided by the IG Act.

“Intelligence” activities can and are to be shared with the OIG if the OIG seeks access or an issue is within OIG purview.

One specific impediment to being able to reach agreement previously is a 2012 memorandum of understanding (MOU) that the EPA had entered into unilaterally with the Federal Bureau of Investigation (FBI). The OIG was not party to, nor was it consulted in creating, that MOU. The EPA asserted that the MOU precluded it from sharing information with the OIG. However, FBI senior management has since confirmed to the EPA that the FBI does not require withholding information from the OIG. While the EPA has confirmed to the OIG that it will now share the information we had been seeking, both with regard to previous matters and on an ongoing basis, the agency has not shared the information requested.

During meetings with the EPA, we have stated that any MOU addressing these issues must be a three-way MOU among the EPA, the OIG and the FBI. The EPA has not rescinded the existing MOU even though its terms allow the Agency unilaterally to rescind it any time it chooses, without seeking consent of the FBI to do so. Nor has the Agency accepted our proposed elements for a revised MOU. Of equally serious concern, we also have not resolved the issue of OHS having and using an assigned criminal investigator while lacking any investigative authority.

These are important impediment issues that we have not yet resolved with the EPA.

The issue with OHS is fundamental to the legal authority of the OIG to do its job. Under the theory being pursued by Administrator McCarthy, the head of an agency could preclude an IG from exercising responsibilities and authorities assigned under the IG Act by simply declaring that because an “activity” falls within an agency “program” or “operation”, that “activity” is exempt from OIG jurisdiction. Under this interpretation of the IG Act, agency heads would be empowered to decide when the IG Act is applicable, and when it is not. If accepted, this approach would create a slippery slope whereby an agency may extend ever further into the OIG’s statutorily assigned jurisdiction, and create, “out of whole cloth”, unilateral exemptions to the IG Act; where no such exemptions currently exist. This is the current state of affairs at the EPA.

Employee Misconduct at the EPA

While Mr. Sullivan’s testimony will address in greater detail an investigative case that the committee has asked about, I want to address that case with a broader view as to why it matters relative to the OIG’s oversight role. In short, we found that an SES-level EPA employee engaged in offensive and inappropriate behavior toward at least 16 women, most of whom were EPA co-workers. Further, we found that very senior EPA officials in the Administrator’s office were made aware of many of these actions and yet did nothing. They did not tell the Administrator, and they did not report any of this knowledge to the OIG. In fact, they approved this individual for a detail assignment to be acting Assistant Administrator for the EPA’s Office of Homeland Security. Subsequently, this official engaged in such behavior toward an additional six women.

The necessary implication of various provisions included in the IG Act is that the OIG will only be able to carry out its statutorily assigned functions if it receives cooperation from the agency.

Further, both the current and previous EPA Administrators have sent memorandums to the entire EPA workforce setting forth an expectation of cooperation with the OIG. In this particular case, the OIG's investigation was negatively impacted and delayed by the fact that these senior EPA officials did not notify the OIG about their knowledge of underlying incidents.

Conclusion

I have discussed today both progress and challenges with regard to the EPA's Office of Homeland Security, and the importance of immediately notifying the OIG of employee misconduct at the agency. This is not the first time that I have raised an alarm in regards to these issues to EPA leadership and at hearings before this and other Congressional committees over the past five years. However, considering that these issues remain unresolved, I question the priority or the sense of urgency placed on resolution, on the part of agency leadership, to move beyond the current status quo.

Cooperation, unlimited access and immediately reporting fraud, waste and abuse to the OIG are necessary tools that enable an OIG to fully accomplish its mission. Yet, OIGs have control over none of these tools, nor, ultimately, can we compel solutions. As I have stated before, the authorities underlying the IG Act are fragile and wholly dependent upon the cooperation of the agency. It is essential that the tenets of the statute directing the OIG's work remain intact, well supported, and not subject to arbitrary revisions by agency heads. Finally, I want to reiterate my appreciation for this committee's support in that regard.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you or committee members may have.

Biography of Inspector General Arthur A. Elkins, Jr.



Arthur A. Elkins, Jr. became Inspector General of the U.S. Environmental Protection Agency (EPA) on June 25, 2010. Before his appointment, Mr. Elkins served as Associate General Counsel within EPA's Office of General Counsel. While in that position, he supervised the delivery of legal counsel, opinions, litigation support, and other legal services for the Office of General Counsel's Information Law Practice, Employment Law Practice, and Intellectual Property Law Practice.

Previously, Mr. Elkins served as the Chief Legal Officer and General Counsel for the Court Services and Offender Supervision Agency, an independent federal executive branch agency responsible for pretrial services and adult parole and probation community offender supervision; Counsel to the Inspector General of the National Science Foundation; and Counsel within the Department of Defense, Defense Office of Hearings and Appeals.

Prior to joining the Federal Government, Mr. Elkins served as an Assistant Prosecuting Attorney in the Ohio Cuyahoga County Prosecutor's Office and as an Assistant Public Defender in the Ohio Cuyahoga County Public Defender's Office.

Mr. Elkins earned a Bachelor degree in social sciences from Thomas A. Edison State College; a Master of Business Administration degree from Baldwin-Wallace College; a Juris Doctor degree from Cleveland-Marshall College of Law, Cleveland State University; and a Master of Laws in Law and Government from Washington College of Law, The American University.

Mr. Elkins is a member of the bar in Ohio, District of Columbia, United States District Court for Northern Ohio, the United States Court of Appeals for the Sixth Circuit, and the Supreme Court of the United States of America.

Mr. Elkins is the recipient of the Council of Counsels to the Inspector Generals Leadership Award, Federal Executive Council on Integrity and Efficiency Award for Excellence in Investigations, and the National Science Foundation Office of Inspector General Commendable Service Award.

Mr. Elkins is the proud father of three children and resides in Bowie, Maryland, with his wife, Gail.