



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

JUN - 5 2012

THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: OIG Report, "EPA Must Improve Oversight of State Enforcement,"
Report No. 12-P-0113, December 9, 2011, Reissued January 30, 2012

TO: Robert Perciasepe
Deputy Administrator

Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance Assistance

Thank you for your memorandum responding to the subject report. Your complete memorandum, which was dated March 12, 2012, and was provided to us on March 27, 2012, contains the U.S. Environmental Protection Agency's (EPA's) official response to our final report and proposed corrective actions in response to our recommendations. I appreciate that you agree with our conclusion that state enforcement performance varies widely across the nation and EPA therefore should take steps to strengthen oversight and address longstanding state performance issues.

Before responding to specific concerns raised in your response, I would like to express our appreciation for the useful information provided by you and the many members of EPA's enforcement staff in headquarters and the regions. The views of these individuals significantly informed our methodological approach as well as our findings. Office of Enforcement and Compliance Assurance (OECA) staff in headquarters met with our team to discuss the information OECA uses in its assessments of state performance, and meetings with that staff informed our selection of methods and sources. Over the course of the review, we interviewed numerous enforcement officials and staff, including 68 in EPA's regions. Many others contributed to our review by responding to our survey of EPA's regions.

I would also like to reiterate the role of the Office of Inspector General as an independent office within EPA, directed by Congress to provide the EPA Administrator and Congress with independent, objective information about program administration deficiencies. Our quality control procedures follow generally accepted government auditing standards issued by the Comptroller General of the United States. As such, I can assure you that our reports undergo a high level of internal scrutiny and independent referencing before they are issued.

In terms of your proposed corrective actions for our six recommendations, we accept your responses for recommendations 2, 3, and 4, but do not consider your responses for

recommendations 1, 5, and 6 to be sufficient. Further, many of the comments in your March 2012 memorandum regarding our review methodology and the accuracy of our assessments are similar to the issues raised in your earlier comments to our draft report, which we responded to in the final report published December 9, 2011. This memorandum provides further comment on your concerns regarding our methodology as well as your responses to recommendations 1, 5, and 6.

Concerns Regarding Review Data and Methods

As noted above, the points raised in your March 2012 memorandum were also included in your comments to the draft report, and we responded to them in the final report, in part, by making certain adjustments to our presentation. As our response to those comments in appendix D of the final report noted, we evaluated how well EPA was overseeing states' environmental enforcement. Using a variety of information sources, we concluded that EPA needed to improve its oversight of state enforcement programs so that the EPA/state partnerships can achieve national enforcement goals. As noted above, EPA agrees with this conclusion.

The scope of our review was nationwide and the state performance metrics that EPA is taking issue with are those that EPA itself employs. Our state examples served to highlight cases where EPA was not adequately overseeing state performance. We relied on EPA's own enforcement data and conducted analyses similar to those the Agency itself conducts in the State Review Framework assessments. We described and accounted for the issues associated with EPA enforcement data in our analyses; we had numerous discussions with EPA over the course of the project about how to best use this information source. While we acknowledge that the enforcement data need to be used appropriately, we do not agree that the solution to issues associated with these data is to not use them. EPA and states expend significant resources collecting this information. The appropriate response to data limitations is to continue to improve data quality while using the data within the limits of their proper usage.

EPA's concerns appear to center on appendix C of our report. That appendix reported information that we obtained from EPA on state performance using the Agency's own metrics. The information in the appendix was only a part of our argument; we included it because we believe that the public should have access to EPA's information. However, EPA overstates the role that the EPA-supplied state performance data played in forming our conclusions. As we described in the methodology of our report and our response to Agency comments on the draft report, we used several other sources of information in our evaluation. These included descriptions of state performance that EPA included in State Review Framework reports and numerous interviews with EPA and state officials and staff. We based our conclusions on information from all of these sources. We verified our assessments of state activity in discussions with OECA staff and officials, and other stakeholders. Because no single set of measures is individually definitive, we corroborated our findings through document review and numerous interviews across six EPA regions. We describe our methods in detail in the report's appendix A. By finding fault with "the limited number of oversimplified metrics, and the associated methodology," EPA has oversimplified the considerable scope of the work that formed the basis for our findings. The statements we made in the report about individual states are based on information from numerous sources. In no case did we rely solely on a simple review of numbers in EPA's information sources. Therefore, we continue to stand by our findings based on our analytical approach.

OECA's March 2012 memorandum finds fault with specific issues uncovered in Illinois, Louisiana, and Alaska. Our work in these states included interviews with 35 EPA regional enforcement officials and personnel (10 in Region 5, 12 in Region 6, and 13 in Region 10). We interviewed 26 different state enforcement officials and personnel (9 in Illinois, 7 in Louisiana, and 10 in Alaska). We also reviewed EPA's State Review Framework reports and supplementary EPA planning and performance documentation available at the time for each of these states. As described in our report, we conducted similar work in Colorado, Iowa, North Dakota, and South Carolina. In total, we interviewed and collected supplemental data from 68 EPA regional enforcement directors, officials, and personnel; and 55 state enforcement directors, officials, and personnel. Where states objected to the EPA data or analyses we presented, we provided them the opportunity to provide us a response with their own data.

We also conducted interviews with EPA headquarters officials, including the Assistant Administrator for Enforcement and Compliance Assurance. We conducted a 10-region survey to collect information about state oversight from each of EPA's regional enforcement directors. We reviewed EPA's completed State Review Framework reports for every state in the country. Our report accurately reflects the combined information collected in these documents, interviews, and data reviews. Our findings, conclusions, and recommendations represent the culmination of our evaluation of each information source we received in developing our findings and conclusions.

The Office of Inspector General as well as others have reported on issues with EPA's enforcement data in the past. These issues persist and must be fixed to improve the accuracy and usefulness of the data. Moreover, allowing these data to be set aside and remain unused due to the concerns surrounding them is a disservice to the resources and effort that states, EPA regions, and EPA headquarters put into collecting and maintaining the data. As previously stated, the report's overall conclusions and findings are not in dispute—EPA must improve the consistency of its oversight of state enforcement.

Response to Proposed Corrective Actions

Based on your planned corrective actions, we have closed recommendations 2, 3, and 4. However, we are unable to close out the complete report without modifications to the corrective action plan regarding recommendations 1, 5, and 6, as discussed below.

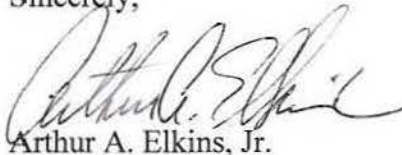
- **Recommendation 1.** Our first recommendation, directed to the Deputy Administrator, was that EPA centralize enforcement resources so that the Agency can more easily direct staff in the regions toward the most pressing problems facing the nation even if it involves moving them across regions. The actions cited in the response culminate in a report to the Deputy Administrator but do not include actions that the Deputy Administrator will take to implement the recommendation. Please provide specific corrective actions to this recommendation that will be taken by the Deputy Administrator.
- **Recommendation 5.** We recommended that OECA establish procedures to reallocate enforcement resources to respond decisively when appropriate under its escalation policy. EPA's response indicates that OECA will work with regions to reallocate enforcement staff within regions to address intra-regional problems but not assist in reallocating staff

across regions. The recommendation is intended to give OECA greater flexibility to reallocate enforcement resources nationwide if the resources available in one region are not sufficient. Please provide information about how OECA resources will be reallocated nationwide in response to state enforcement problems. Potential steps should include a range of escalation procedures, including reallocating enforcement resources across regions when necessary following a potential future retraction of a state authorization.

- **Recommendation 6.** We recommended that OECA develop a state performance scorecard to track state enforcement activities and results. OECA committed to develop and make available dashboards for the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act. The current dashboard available for the Clean Water Act, for example, provides information about state performance but stops short of providing a state "scorecard." As with any scorecard, the main value of the scorecard is in comparing scores from year to year and from state to state. Before we can agree with this corrective action we need to determine whether the dashboards for the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act will contain this information. Please provide more information about what "score" the dashboard provides and how OECA plans to display the information for the public.

If you have any questions or concerns, please contact Carolyn Copper, Acting Assistant Inspector General for Program Evaluation, at (202) 566-0829; or Dan Engelberg, Director for Enforcement and Water Evaluations, at (202) 566-0830.

Sincerely,



Arthur A. Elkins, Jr.

cc: Steve Chester, Deputy Assistant Administrator, OECA
Lisa Lund, Director, Office of Compliance, OECA
Betsy Smidinger, Deputy Director, Office of Compliance, OECA
Mamie Miller, Associate Deputy Director, Office of Compliance, OECA
Gwendolyn Spriggs, Audit Follow-Up Coordinator, OECA
Nena Shaw, Special Assistant to the Deputy Administrator
Charles Sheehan, Deputy Inspector General
Carolyn Copper, Acting Assistant Inspector General for Program Evaluation,
Office of Inspector General
Elizabeth Grossman, Deputy Assistant Inspector General for Program Evaluation,
Office of Inspector General
Dan Engelberg, Director for Water and Enforcement Evaluations,
Office of Program Evaluation, Office of Inspector General
Kevin Chaffin, Office of the Chief of Staff, Office of Inspector General
Eileen McMahon, Assistant Inspector General for OCPA