



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

AUG 29 2019

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Response to Office of Inspector General Hotline Report, "*EPA Asserts Statutory Law Enforcement Authority to Protect Its Administrator but Lacks Procedures to Assess Threats and Identify the Proper Level of Protection*," Report Number: 18-P-0239; dated, September 4, 2018

FROM: Susan Parker Bodine

A handwritten signature in blue ink that reads "Susan Parker Bodine".

TO: Charles J. Sheehan
Deputy Inspector General

Thank you for the opportunity to respond to the issues and recommendations presented in the Office of Inspector General's (OIG) Hotline Report, regarding the protection of the EPA Administrator. Since the issuance of the report in September 2018, the Office of Enforcement and Compliance Assurance (OECA) has continuously engaged with the OIG in an ongoing conversation to ensure we understood the recommendations and were implementing the corrective actions to satisfy the recommendations.¹

OECA'S OVERALL POSITION ON THE FINAL REPORT:

OECA agrees with the final report and appreciates the report revisions made by the OIG. OECA also agrees with most of the recommendations and has implemented the corresponding corrective actions. Only two recommendations are outstanding and OECA looks forward to discussing these further with the OIG.

EPA'S RESPONSE TO REPORT RECOMMENDATIONS:

OECA met and corresponded regularly with the OIG staff to clarify the recommendations, review the proposed corrective actions, and provide evidence the corrective actions were, in fact, being implemented to the OIG's satisfaction. Based on those meetings and conversations, we affirmed our agreement with recommendations 1-5 and have already implemented the corrective actions for those recommendations. Provided below is a summary of all OECA recommendations and corrective actions.

¹ The 35-day government shutdown in December 2018 to January 2019 interrupted the progress made and further delayed OECA's response to the final report.

Recommendation 1: *Obtain a formal legal opinion from the EPA's Office of General Counsel that articulates the underlying legal basis for the law enforcement authority of the Protective Service Detail's agents.*

Response: Agree

OECA obtained a formal legal opinion from EPA's Office of General Counsel (OGC), dated June 29, 2018. It articulates the underlying legal basis for the law enforcement authority of the Protective Service Detail's (PSD) agents.

Corrective Action: Complete

OECA provided the OIG with a copy of the legal opinion. The OIG acknowledged receipt of the memo in their Report of 9/4/2018 (page 8), and as a result, the OIG considered this recommendation closed. For a copy of the legal opinion, see the Report, Appendix A (page 28). *No further action required.*

Recommendation 2: *Implement OGC's opinion through new policies, procedures and/or guidance that defines the amount of time agents must spend on investigating environmental crimes and how the time will be monitored and documented by supervisors.*

Response: Agree

OECA will develop new policies, procedures and/or guidance that defines the amount of time agents must spend on investigating environmental crimes, informed by the OGC opinion.

Corrective Action: Complete

OECA issued, "Policy Regarding the Percentage of Time Criminal Investigation Division (CID) National Capital Area Office (NCAO) Special Agents Shall Spend Investigating Environmental Crimes" on 10/31/18. Documentation of the policy was provided to OIG on 3/14/19. *No further action required.*

Recommendation 3: *Have the OECA/OCEFT complete and document a threat assessment for the EPA Administrator on a regular basis to identify the proper level of protection required for the Administrator.*

Response: Agree

OECA will conduct and document a threat analysis on a regular basis (approximately twice a year).

Corrective Action: Complete

OECA documented a threat analysis and will continue to do so on a regular basis. The OIG was provided a copy of a threat assessment on 5/16/19 and requested additional information. On 6/19/19, OECA provided the OIG with a viewing room to see the detailed threat assessment. *No further action is required.*

Recommendation 4: *Using a justified level of protection based on a threat assessment, determine appropriate staffing and corresponding schedules for PSD.*

Response: Agree

OECA will manage the staffing and scheduling of the Administrator's PSD based on the level of protection determined by the threat assessment.

Corrective Action: Complete

OECA issued Protective Services Determination Directives, and copies of the directives were provided to the OIG on 3/14/19. *No further action required.*

Recommendation 5: *Create and implement comprehensive policies, procedures and standard operating procedures (SOPs) covering the protective services detail operations and proper protection level determinations.*

Response: Agree

OECA will update SOPs and will issue interim guidance governing PSD activities until the SOPs are finalized.

Corrective Action: Complete

OECA created and implemented comprehensive standard operating procedures covering PSD operations and proper protection level determinations. A copy of the SOPs was provided to OIG on 3/14/19. *No further action required.*

Recommendation 6: *Determine the amount of overtime that was improperly authorized for PSD agents in calendar years 2018 and 2017, and identify the amounts paid as improper payments.*

Response: Disagree

Despite several meetings with the OIG to resolve recommendations 6 and 7, some of which included the pay experts from the Office of Chief Financial Officer (OCFO), OECA and the OIG could not reach an agreement. As explained in the agency's memorandum dated 6-29-18, a response to the draft report, and in the meetings with the OIG, OECA disagrees with the OIG's assertion that payments made to PSD agents for actual overtime hours worked were improper, as they were made to employees for actual work performed. These payments were not improper even though the pre-approval requests for overtime may not have been according to best practices (with, for a short period, the PSD Special Agent in Charge signing paper pre-approvals for overtime).

Recommendation 7: *Require the OECA/OCEFT to report improper payments to PSD agents to the Office of the Chief Financial Officer for inclusion in the annual Agency Financial Report.*

Response: Disagree

Despite several meetings and exchanges with the OIG to resolve recommendations 6 and 7, some of which included the pay experts from the Office of Chief Financial Officer (OCFO), OECA and the OIG could not reach an agreement. As explained in the agency's memorandum dated 6-29-18, a response to the draft report, and in the meetings with the OIG, OECA disagrees with the OIG's assertion that payments made to PSD agents for actual overtime hours worked were improper, as they were made to employees for actual work performed. These payments were not improper even though the pre-approval requests for overtime may not have been according to best practices (with, for a short period, the PSD Special Agent in Charge signing paper pre-approvals for overtime).

AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS:

Please see corrective actions table below containing documentation of the corrective actions for recommendations 1-7.

Agreement No.	Recommendation	Corrective Action	Completion Date
1	Obtain a formal legal opinion from the EPA’s OGC that articulates the underlying legal basis for the law enforcement authority of the PSD agents.	EPA’s OGC provided a formal legal opinion affirming the authority of the PSD to provide protective services to the EPA Administrator (see Memo dated 6/29/18).	Legal Opinion dated 6/29/18 obtained and provided to OIG
2	Implement the OGC opinion through new policies, procedures and/or guidance that defines the amount of time agents must spend on investigating environmental crimes and how the time will be monitored and documented by supervisors.	Directive specifying the amount of time agents must spend investigating environmental crimes and how time will be monitored and documented by supervisors issued by OECA on 10/31/18.	OECA Protective Service Determination Directives completed 10/31/18
3	Have OCEFT complete and document a threat analysis for the EPA Administrator on a regular basis to justify the proper level of protection required for the Administrator.	OECA conducts threat assessments approximately semiannually or as needed and adjusts the level of protection accordingly.	OECA Protective Service Determination Directives completed 10/31/18
4	Using a justified level of protection based on a threat assessment, determine appropriate staffing and corresponding schedules for PSD agents.	OECA to manage staffing and scheduling of the Administrator’s protective service detail based on the level of protection.	OECA/Protective Service Determination Directives completed 10/31/18
5	Create and implement comprehensive policies, procedures and standard operating procedures covering the PSD operations and proper protection level determinations.	OECA updated directives governing PSD activities.	OECA published three National Capital Area Office directives: 1) Motorcade Operations 2) Airport Advances 3) OCONUS Advances Completed 12/19/18

Disagreements No.	Recommendation	Agency Explanation/Response	Proposed Alternative
6	Determine the amount of overtime that was improperly authorized for Protective Service Detail agents in calendar years 2016 and 2017 and identify the amounts paid as improper payments.	OECA asserts these payments were not improper, as they were made to the employees for actual work performed. The payments made to PSD agents were, in fact, payments made for actual overtime worked and as such, these payments were not improper even though the pre-approval requests for overtime may not have been according to best practices (with, for a period of time, the PSD Special Agent in Charge signing paper pre-approvals for overtime).	Further discussion with the OIG to resolve disagreement regarding what the OIG asserts were improper payments.
7	Report improper payments to Protective Service Detail agents to the Office of the Chief Financial Officer for inclusion in the annual Agency Financial Report.	Because OECA and OCFO assert no improper payments were made, there are no improper payments to report.	Further discussion with the OIG to resolve disagreement regarding what the OIG asserts were improper payments.

Contact Information:

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

- cc: Ryan Jackson, Office of the Administrator
- Holly Greaves, OCFO
- Lawrence Starfield OECA
- Patrick Traylor OECA,
- Henry Barnet OECA/OCEFT
- Pam Mazakas OECA/OCEFT
- Gwendolyn Spriggs OECA/OAP