

Management Implication Report: The EPA Did Not Properly and Timely Disclose Fraud in its Programs and Operations

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OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

September 4, 2024

MEMORANDUM

SUBJECT: Management Implication Report: The EPA Did Not Properly and Timely Disclose Fraud in its Programs and Operations

FROM: Sean W. O'Donnell, Inspector General 

TO: Michael S. Regan, Administrator

Purpose: The U.S. Environmental Protection Agency Office of Inspector General has identified a concern regarding the EPA's obligation to properly and timely disclose fraud to the OIG. A failure to disclose fraud, waste, and abuse, or other potential improper or illegal conduct involving an EPA program or operation, can negatively impact the EPA's ability to fulfill its mission and ensure the soundness of, and confidence in, the EPA's programs and operations. Moreover, this places the public's health at risk and diminishes the trust in, and resiliency of, the EPA's programs and operations. This report addresses the concern that the EPA did not properly and timely disclose fraud in the EPA's programs and operations, which weakens the OIG's ability to fulfill our fraud fighting mission and places in jeopardy the success of the EPA's public health mission. We conducted this investigation in accordance with the *Quality Standards for Investigation* published in November 2011 by the Council of the Inspectors General on Integrity and Efficiency, as well as our internal standards. These standards require that we conduct investigations in a timely, efficient, thorough, and objective manner.

Background: According to the Inspector General Act of 1978, as amended, 5 U.S.C. §§ 401–424, the OIG is charged with preventing and detecting fraud, waste, and abuse related to the programs and operations of the EPA and the U.S. Chemical Safety and Hazard Investigation Board. To this end, the OIG's Office of Investigations has responsibility for "conduct[ing], supervis[ing], and coordinat[ing] ... investigations relating to the programs and operations of the [EPA and the CSB]," according to 5 U.S.C. § 404(a)(1).

As set forth in Basic obligation of public service, 5 C.F.R. § 2635.101, "employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities." Further, 40 C.F.R. § 13.5, Claims involving criminal activities or misconduct, states that "The Administrator will refer cases of suspected criminal activity or misconduct to the EPA Office of Inspector General." This is consistent with the long-standing policy of the EPA to "require that all employees promptly report instances of, and information on, any known or suspected violation of law, rules, or regulations; mismanagement; gross waste of funds; abuse of authority; or substantial and specific danger to the public health and safety ... to their supervisors or,

To report potential fraud, waste, abuse, misconduct, or mismanagement, contact the OIG Hotline at (888) 546-8740 or OIG.Hotline@epa.gov.

if necessary, directly to the OIG.” EPA Manual 6500, *Functions and Activities of the Office of Inspector General* (1994). On numerous occasions over the past nine years, Administrator Gina McCarthy, Acting Administrator Andrew Wheeler, and Administrator Michael S. Regan have issued memorandums directing EPA staff to cooperate with and report possible waste, fraud, and abuse to the OIG. Additionally, the OIG provides fraud awareness briefings at regional and headquarters offices to various EPA programmatic staff.

Consistent with the EPA’s mission to protect human health and the environment, the Clean Air Act, or CAA, was designed to address air pollution from various sources. In general, those sources fall into two categories: stationary and mobile. Stationary sources include factories, power plants, and other industrial facilities. Mobile sources include cars, planes, trains, and other sources that have engines or equipment that produce exhaust and emissions. The CAA sets standards for specific pollutants that mobile sources emit, such as carbon monoxide, hydrocarbons, nitrogen oxides, and particulate matter. Generally, mobile sources include both on-road, such as transportation or freight sources, and nonroad, such as agriculture, construction, or recreation sources. The emission standards limit the amount of pollution that can be emitted by that source.

Manufacturers wishing to sell engine/motor vehicles in the United States must demonstrate compliance with the CAA and all applicable EPA regulations. Every engine/motor vehicle in the United States must meet emissions standards and conformity requirements. Upon successful demonstration, the EPA will issue a certificate of conformity that authorizes the manufacturer to produce and sell that engine in the United States. Additionally, engines/motor vehicles that do not meet emissions standards and conformity requirements are prohibited from being imported into the United States. This prohibition applies to all vehicles, heavy-duty engines, nonroad engines, and recreational vehicles.

The CAA allows for exemptions from emissions and conformity requirements for national security purposes provided that the engines are owned and used by a federal government agency. Moreover, an automatic exemption is available if the federal government agency makes a written request to the manufacturer because the engines possess certain specialized military criteria. In lieu of an automatic exemption, manufacturers may request a national security exemption if the request is endorsed by a federal government agency.

Concern Identified: In early 2024, the EPA OIG and partner law enforcement agencies presented information to the U.S. Attorney’s Office regarding an active criminal investigation into several potential criminal violations by a business entity related to the importation of engines prohibited under the CAA.¹ Central to that presentation were two documents, sent via email in 2019, from the owner of a business entity to EPA employees who worked in the compliance and enforcement sections of the Office of Air and Radiation.

¹ The potential criminal violations included 18 U.S.C. § 371, 18 U.S.C. § 1002, 18 U.S.C. § 1028A, 18 U.S.C. § 1343, and 18 U.S.C. § 1519.

The first document purported to be an “endorsement letter” from Department of Defense, or DoD, personnel and stated that certain submersible engines would be purchased by the business entity and be used to support DoD objectives. The intent of the document, according to Office of Air and Radiation personnel, was to convince the EPA that the engines referenced above were “national security exempt,” which they were not. The national security exemption was necessary because the engines did not meet CAA requirements nor did the business entity have a certificate of conformity, also required by the CAA. DoD personnel confirmed that they neither sent nor signed that document. Office of Air and Radiation compliance and enforcement personnel should have known that the document was fraudulent since they evaluate and grant these types of exemptions. In fact, in an email between EPA compliance and enforcement staff, one employee wrote, “I would question their endorsement letter.”

The second document, sent two months later, was a letter from the business entity owner to Office of Air and Radiation compliance and enforcement personnel. The owner apologized “for the mistake in sending you an unauthorized letter” from DoD personnel, noting that the owner took “full responsibility for [his] actions and behavior in modifying the letter.” This document would not have prevented OIG criminal investigators from evaluating the potential fraudulent nature of the first document.

These documents, taken together, represent unmistakable indicators of fraud against the EPA, the CAA, and the EPA’s programs and operations. Furthermore, the actions of the business entity owner reasonably indicated attempts to interfere with or obstruct the EPA’s lawful governmental functions by “deceit, craft, or trickery, or at least by means that are dishonest.”² Unfortunately, the EPA failed to contemporaneously provide these concerning indicators of fraud against the EPA’s programs and operations to the OIG in 2019 as required by 5 C.F.R. § 2635.101 and 40 C.F.R. § 13.5. In fact, the EPA did not provide this evidence to the OIG until 2023 when the OIG and law enforcement partners began investigating allegations that the business entity was attempting to illegally import engines prohibited by the CAA.

As a result of the EPA’s failure to properly disclose indicators of fraud in a timely manner to the OIG, the U.S. Attorney’s Office declined to pursue criminal charges against the business entity owner. As such, the OIG and partner law enforcement agencies have closed this investigation.

My office is notifying you of this issue so that the Agency may take whatever steps it deems appropriate to ensure that the OIG is properly and timely notified of all instances of suspected fraud, waste, abuse, and corruption. To address the concerns identified in this report, we provide the following measures for improvement for the EPA’s consideration:

- Conduct training to ensure that all EPA personnel understand their public service obligations under 5 C.F.R. § 2635.101, 40 C.F.R. § 13.5, and long-standing EPA policy.

² *United States v. Nersesian*, 824 F.2d 1294, 1313 (2d Cir.), *cert. denied*, 484 U.S. 957, 108 S. Ct. 355, 98 L. Ed. 2d 380, and *cert. denied*, 484 U.S. 958, 108 S. Ct. 357, 98 L. Ed. 2d 382 (1987), and *cert. denied*, 484 U.S. 1061, 108 S. Ct. 1018, 98 L. Ed. 2d 983 (1988).

- Conduct training to ensure that all EPA and state personnel who implement or regulate delegated programs understand what constitutes fraud. While fraud typically involves cheating the government out of property or money, “it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft, or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation, chicane, or the overreaching of those charged with carrying out the governmental intention.” *Hass v. Henkel*, 216 U.S. 462 (1910).
- Implement procedures to ensure that the OIG is notified of all complaints, allegations, and evidence of wrongdoing, fraud, waste, abuse, or corruption involving any EPA programs, operations, or environmental laws or regulations that the EPA implements or delegates to state authorities in a timely manner.

If you decide it is appropriate for your office to take or plan to take action to address these matters, the OIG would appreciate notification of that action. Should you have any questions regarding this report, please contact me at [REDACTED] or [REDACTED], investigative counsel, at [REDACTED] or [REDACTED].

cc: Nicolas Evans, Acting Assistant Inspector General for Investigations



Whistleblower Protection

U.S. Environmental Protection Agency

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