



OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## **Special Report**

# **EPA Needs to Respond More Timely to Reports of Investigation**

**Report No. 2007-M-00003**

**May 7, 2007**

## **Abbreviations**

DOJ	U.S. Department of Justice
EPA	U.S. Environmental Protection Agency
Handbook	EPA Disciplinary Process Handbook
OIG	Office of Inspector General
OI	Office of Investigations



# At a Glance

*Catalyst for Improving the Environment*

## Why We Did This Review

We conducted this special review to determine whether the U.S. Environmental Protection Agency (EPA) took disciplinary action on employee misconduct cases identified by Office of Inspector General (OIG) Reports of Investigation; and if the disciplinary action taken was timely, appropriate, and in accordance with established guidelines. We looked at cases closed between October 1, 2002, and September 30, 2006.

## Background

Many jobs at EPA require employees to deal with the public. EPA employees also manage, control, and oversee Federal funds as well as sensitive and confidential data. EPA employees must maintain the highest standards of conduct as representatives of the Agency. Failure to deal quickly and decisively with violations of these standards undermines the confidence the public will have in the Agency.

**For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.**

**To view the full report, click on the following link:**  
[www.epa.gov/oig/reports/2007/20070507-2007-M-00003.pdf](http://www.epa.gov/oig/reports/2007/20070507-2007-M-00003.pdf)

## ***EPA Needs to Respond More Timely to Reports of Investigation***

### **What We Found**

While EPA took disciplinary action where deemed appropriate, it did not take the actions timely. EPA policies require the Agency to initiate disciplinary actions within 30 days from the date the Office of Inspector General's Office of Investigations issues a Report of Investigation. However, EPA took an average of almost 200 days to do so. According to several EPA action officials, EPA may not take disciplinary action within 30 days because the Agency cannot complete the process recommended in the EPA Disciplinary Process Handbook within 30 days. EPA officials noted they are often uneasy in dealing with the sensitive issues involved, and union involvement can also cause delays. Further, EPA officials said it would be helpful if the Office of Investigations did followup on the status of pending actions and provided reminders.

For six cases we reviewed, the Agency did not take disciplinary actions that were severe enough considering the nature of the misconduct. For example, EPA only gave an oral admonishment to an employee who was absent without authorization for over 400 hours. Another employee, who pled guilty in court to using a credit card stolen from another Federal agency for personal purchases, only received a letter of reprimand. A third employee, who pled guilty to bank fraud and was sentenced to a day in jail and 5 years probation, had a 45-day suspension recommended by the employee's supervisor reduced by the action official to 14 days.

### **What We Recommend**

We recommend that the EPA Deputy Administrator:

1. Re-evaluate the 30-day reporting requirement to consider a timeframe more in line with the length of time necessary to accomplish EPA's disciplinary process.
2. In cases when the Agency is unable to meet established timeframes, provide an action plan that includes any interim action taken to minimize the risks of continued misconduct pending final disciplinary action.
3. Assure that disciplinary actions taken in employee integrity and misconduct cases are sufficient and appropriate.

The Agency generally agreed with our recommendations, although we would like to see the Agency make more of a commitment to dealing with employee misconduct.



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

OFFICE OF  
INSPECTOR GENERAL

May 7, 2007

**MEMORANDUM**

**SUBJECT:** Special Report:  
EPA Needs to Respond More Timely to Reports of Investigation  
Report No. 2007-M-00003

**TO:** Marcus Peacock  
Deputy Administrator

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures. The findings described in the report are not binding upon EPA in any enforcement proceeding brought by EPA or the Department of Justice.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$35,537.

**Action Required**

In accordance with EPA Manual 2750, you are required to provide a written response to the findings and recommendations in this report within 90 days of the report date. You should include a corrective actions plan for agreed upon actions, including milestone dates. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Stephen J. Nesbitt, Assistant Inspector General for Investigations, at (202) 566-0817 or [nesbitt.stephen@epa.gov](mailto:nesbitt.stephen@epa.gov); or Larry Valett, Project Manager, at (202) 566-0815 or [valett.larry@epa.gov](mailto:valett.larry@epa.gov).

A handwritten signature in black ink, appearing to read "Bill A. Roderick", is written over a horizontal line.

Bill A. Roderick  
Acting Inspector General

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## Purpose

The overall role of the Office of Investigations (OI) within the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) is to promote the integrity of Agency programs and personnel. OI is responsible for detecting and investigating indications or allegations of violations of Federal criminal law, violations of regulations, or other irregularities indicating potential misconduct. These allegations can range from making false claims or statements, fraud, theft, misuse of Government equipment, conflicts of interest, ethics violations, and other matters. Our objective was to determine whether EPA took appropriate administrative action on those cases when OI investigations verified the allegations against EPA employees; and assess whether such action was timely, consistent with the matters investigated, and in accordance with established laws, regulations, and policies.

## Background

The Inspector General Act of 1978 requires the EPA OIG to conduct and supervise audits and investigations of EPA programs and operations. It is the OIG's responsibility to: (1) investigate complaints against EPA employees; and (2) investigate information received about activities that may constitute a violation of law, rule, or regulation; mismanagement; waste of funds; abuse of authority; or a substantial and specific danger to the public health and safety.

Investigations often involve EPA employees concerning allegations of serious misconduct, conflicts of interest, and criminal activity. OI evaluates the allegations to determine whether an investigation is warranted and appropriately focuses resources where needed. This approach is particularly important in evaluating many complaints of employee misconduct where referrals may be made to (and immediate corrective action can be taken by) Agency officials without the necessity of an investigation by the OIG.

Investigations of EPA employees fall under the following categories:

**A. Criminal Matters.** The OIG investigates criminal matters involving waste, fraud, and abuse by EPA employees, contractors, or grantees. In some instances, the OIG may refer certain criminal matters to other Federal agencies if the matter does not fall within the jurisdiction of the OIG, or depending upon other circumstances.

**B. Ethical Conduct.** The OIG investigates allegations against employees for ethical or other conduct prejudicial to the Government (5 Code of Federal Regulations Part 2635 and 40 Code of Federal Regulations Part 3).

OI generally presents the results of employee investigations by issuing a Report of Investigation to the U.S. Department of Justice (DOJ), the EPA program or action official, or both. Due to the differences in judicial districts, DOJ may not always require a Report of Investigation for criminal prosecution. However, OI will generally issue a Report of Investigation so that the Agency can take disciplinary action regardless of whether DOJ prosecutes the employee.

OI would not generally issue a Report of Investigation if the employee resigns from EPA before completing the investigation because EPA is no longer in a position to take action. Nonetheless, DOJ may prosecute cases of criminal misconduct regardless of whether the person is a current EPA employee. When OI issues a Report of Investigation to the Agency, the action officials must adjudicate or initiate appropriate administrative action within 30 days of the date of the report, as per EPA Manual 6500, and notify the OIG of the proposed action.

OI investigates indications or allegations of violations of Federal criminal law, regulations, and other irregularities by EPA employees. These allegations can range from making false claims (such as travel vouchers or other claims for reimbursements), false statements, the misuse of Government equipment (such as Government automobiles or computers), conflicts of interest, ethics violations, and other matters. Reports of Investigation do not include conclusions or recommendations; they simply report the facts of a situation. Any actions resulting from investigations become the responsibility of management to follow up and take action.

Between October 1, 2002, and September 30, 2006, the OI closed 69 cases involving the integrity or conduct of EPA employees. Table 1 lists the types of cases.

EPA’s overall reputation is at stake whenever employee actions have a detrimental effect on the Agency’s reputation. EPA cannot reasonably expect the regulated community to take environmental regulations or guidance seriously if it does not require its employees to comply with the rules relating to ethical conduct. Many jobs at EPA require employees to deal with the public; and manage, control, and oversee Federal funds and sensitive and confidential data. For that reason, it is crucial that EPA employees maintain the highest standards of conduct as representatives of the Agency and the Federal Government. Failure to deal quickly and decisively with violations of these principles undermines that confidence. In one Regional Administrator’s decision, EPA stated that these types of matters are extremely serious, and EPA cannot tolerate this type of misconduct when the public expects the highest ethical conduct from the people who preserve and protect our environment.

**Table 1: Types of Cases Investigated**

Type of Case	No. of Cases
Bribery	2
Conflict of interest	21
Conspiracy	2
Credit card misuse	3
Embezzlement	3
False claims	5
False statements	10
Forgery	3
General crimes	3
Impersonation/misrepresentation	1
Misuse of Government property	7
Narcotics	1
Stolen property	3
Theft	2
Wire fraud	3
<b>Total cases</b>	<b>69</b>

Source: OIG case file database

## Noteworthy Achievements

Our review discovered that the Agency took disciplinary action in all employee misconduct cases when warranted. In discussions with several action officials, employee misconduct cases are assigned a high priority by the Agency, and EPA also wants to make sure that the disciplinary action it takes is appropriate in the circumstances. They often contact other regions

or EPA Headquarters to ensure that the disciplinary action proposed is consistent with other regions.

## Scope and Methodology

We performed this review in accordance with the President’s Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency *Quality Standards for Inspections*, which guides the conduct of all inspection work performed by OIGs. The term “inspection” includes evaluations, inquiries, and similar types of reviews that do not constitute audits or criminal investigations. We conducted preliminary research and field work from October 23, 2006, to January 5, 2007.

We reviewed the investigative files for 69 cases involving employee misconduct closed during the period October 1, 2002, through September 30, 2006. We reviewed all case file information, including the original allegation, status reports, correspondence between OI and EPA officials, the Report of Investigation, and Agency responses. If necessary, we discussed the cases with the special agents who conducted the investigation. We discussed administrative actions and procedures with EPA action officials.

We had found disciplinary action was warranted in 41 cases and the allegations to be unfounded in 28 cases (see Table 2). For 26 of the 41 cases, we issued reports to the Agency. We did not issue a report in 15 cases because the employees resigned from EPA before prosecution, or the cases concerned OIG employees (see Table 3).

**Table 2: Summary of Cases Reviewed**

<b>Cases reviewed</b>	<b>69</b>
Allegations unfounded	28
Cases warranting action	41

Source: OIG case file database

**Table 3: Cases Requiring Action**

<b>Breakdown of Cases</b>	
Warranting EPA action	26
Resigned before prosecution	11
Involved OIG employee	4
<b>Total cases</b>	<b>41</b>

Source: OIG analysis of case files

## Results of Review

### *EPA Actions Not Timely*

EPA took an average of almost 200 days to notify the OIG of the decisions made or administrative action taken on the 26 cases of employee misconduct warranting action, approximately 6 months more than the 30 days required. The actual time ranged from 26 days to 1,046 days. Delays in taking action on employee integrity and misconduct undermine the confidence and trust of the Federal Government. EPA Manual 6500 states that EPA action officials are to adjudicate or initiate appropriate administrative action within 30 days of the date of the report, and to notify the OIG of the proposed action. If there is no action taken within 30 days, the action official must provide a status report to the OIG. Action officials must also notify OI of the final disposition of the full and complete administrative action taken. Our review found that the case files did not contain any correspondence or memos from the Agency that it would not take any administrative action within the required timeframe.



According to the action officials we contacted, the primary reason the Agency did not take administrative action within 30 days is that EPA cannot complete the process outlined in EPA’s Disciplinary Process Handbook (Handbook) within 30 days and still afford the employee due process. A detailed list of the process is in Appendix A.

The Handbook is a reference for supervisors and managers to help them determine whether to impose disciplinary action in each particular case. The Handbook identifies seven steps to help Agency officials through the disciplinary process, starting with contacting the Human Resources Office. The process recommends using a strategic, team approach to provide Agency officials with consulting and advisory services, and generally includes forming an Advisory and Support Team to provide advice and guidance to action officials during the disciplinary review process. The process follows established EPA policies concerning disciplinary actions, as listed in Table 4. The Handbook describes establishing an action plan (“Road Map”) when discipline is needed. It identifies specific procedures the Advisory and Support Team needs to follow to recommend what disciplinary action to take, and how the Agency should respond to the investigation.

**Table 4: EPA Employee Discipline Policies**

EPA Policy	Title
3110.6B	Adverse Actions
3110.8A	Administrative Grievance System
3120.1	Conduct and Discipline
3120.2	Conduct and Discipline, Senior Executive Service

Source: EPA Disciplinary Process Handbook

The timeframes included in the Handbook, if followed, would take a minimum of about 45 days. Several Agency officials told us the severity of the discipline affects the time – the more severe the discipline, the longer the process. Regions may seek advice from the Agency, other regions, or both, to make certain the disciplinary action is fair and consistent. Understandably, the region’s concern is taking disciplinary action that is appropriate and it can defend.

Nonetheless, EPA Manual 6500 states that it is to adjudicate or initiate appropriate administrative action within 30 days of the date of the report, and to notify the OIG of the proposed action. When the Agency cannot take final disciplinary action within 30 days, it is required to provide OI with a status report within 30 days. The status report does not need to follow a specific format, and the action plan developed during the region’s review process could serve as the status report to the OIG. Our review found that the case files did not contain any correspondence or memos from the Agency to the OIG indicating it would not be taking any administrative action within the required timeframe.

The time involved in completing the review process and determining what disciplinary action to take may continue to put EPA funds at risk and have a negative impact on the integrity of EPA programs. To help alleviate such concerns, EPA may take interim actions, such as reassignment or administrative leave, to minimize the risks of continued misconduct. In such instances, the Agency should inform the OIG of the interim actions taken to protect EPA funds and programs pending final disciplinary actions. There were no notifications of any interim actions taken by the Agency pending a final decision.

If the Agency is considering disciplinary action on an employee who is a member of an employee bargaining unit or union, the employee has the right to union representation during the

process. The Agency officials we contacted said that union involvement may dramatically affect the proposed administrative action, as well as how long it takes the Agency to act. Agency officials told us that unions are too willing to file grievances, often defend inappropriate behavior, and delay the final decision when the Agency is ready to take disciplinary action.

Agency officials also said it would be beneficial if OI followed up on cases to “remind” action officials that they need to take action. While the OIG is not responsible to remind or otherwise ensure that the Agency takes any action, one of the President’s Council on Integrity and Efficiency standards established for investigative organizations is to monitor administrative issues and assure that action officials consider and address any recommendations. While the Report of Investigation does not make recommendations or conclusions in investigative matters, both the Agency and OI can benefit from improved communications to ensure these matters are resolved in a timely fashion.

### ***EPA Actions Not Sufficient***

For 6 of the 26 cases that warranted EPA action, the disciplinary actions taken did not appear to sufficiently consider the severity of the misconduct. In accordance with EPA Order 3120.1, *Conduct and Discipline Manual* (Appendix C), disciplinary actions can include oral admonishments, written warnings, letters of reprimand, suspension, downgrade, or separation from Federal service. The disciplinary process focuses on several factors, including the “Douglas Factors.” These are relevant factors, identified by the U.S. Merit Systems Protection Board, in determining the appropriateness of disciplinary actions (see Appendix B for a listing). Based on these factors, and EPA Order 3120.1, we concluded the following six disciplinary actions were not sufficient:

- An employee was absent for over 400 hours without authorization and did not submit leave slips, yet only received an oral admonishment. The guidance on corrective discipline (Appendix to EPA Order 3120.1) lists the disciplinary action for the first offense for being absent without leave as a written reprimand to a 5-day suspension. Being absent without leave for over 400 hours is equivalent to over 50 days. An oral admonishment does not appear to meet established EPA policies or guidelines.
- An EPA employee admitted using a Government position to obtain information and conduct research to write a book on emergency and terrorism preparedness. The employee acknowledged not being directed by anyone at EPA to conduct the research or write the book, and the book was not related to the employee's EPA duties. According to the Appendix to EPA Order 3120.1, using an employee’s official authority to gain information for private gain is a minimum 14-day suspension for the first offense. However, this employee only received a written warning.
- An employee used a credit card stolen from another Federal agency for personal purchases. The employee pled guilty in a plea agreement, had to make restitution, and received 3 years probation from the State where the employee lived. EPA only issued a letter of reprimand.

- An employee received an oral reprimand for participating in a food stamp trafficking scheme conducted by the employee's spouse. DOJ indicted and convicted the employee's spouse, but declined prosecution on the employee. The employee stated they were not aware of the spouse's activities, but the employee commonly cashed checks for the spouse, even though the checks were payable to the employee. According to EPA Order 3120.1, the minimum disciplinary action for this type of misconduct is a written reprimand.
- An employee fraudulently altered pay stubs and the action official reduced the disciplinary action from the 60-day suspension recommended by the employee's supervisor to 10 days because the employee was a "valued employee." The action official based the suspension on the "deliberate misrepresentation and falsification of a material fact," and "falsifying official government documents." The disciplinary action for a first offense for either of these charges ranges from a written reprimand to removal. While we agree that the disciplinary action was within the Agency's discretion, we believe that the proposed 60-day suspension would have been more commensurate with the offenses.
- An employee pled guilty to bank fraud for stealing several thousand dollars in income tax refund checks, forging signatures, and depositing the checks into the employee's bank account. The court sentenced the employee to 1 day in jail and 5 years probation. The employee's supervisor recommended a 45-day suspension but the action official reduced it to 14 days. Reducing the disciplinary action does not seem appropriate considering the nature and seriousness of the offense. Of particular concern, the employee was a grant specialist who dealt with the public on a regular basis.

Based on the Douglas factors and the guidelines established by the Appendix to EPA Order 3120.1, most of the disciplinary actions in the cases cited above were not commensurate with the offenses. While the action officials considered the Douglas Factors in these cases, they also have wide latitude in determining the disciplinary action in each case. The first of the Douglas Factors is to consider the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities. The action official also needs to consider whether the offense was intentional, technical, or inadvertent; committed maliciously or for gain; or repeated frequently. EPA could consider using an independent review board or other party to assess whether or not the action taken is in accordance with established EPA employee discipline policies and the Douglas Factors.

During our review, we noted an open case that, while not part of our original review of closed case files, is of concern. While the case is still open, the investigation is complete and the Agency took action. Specifically, an employee admitted to fraudulently purchasing computer equipment between 1992 and 2002. This employee intentionally circumvented EPA's procurement system, and never had any purchasing authority. The computers were never included in EPA's inventory system, and this employee cannot currently account for any of the computers. The employee freely admitted some of the fraudulently purchased equipment was for personal use. Based on dollar thresholds and other factors, DOJ declined criminal prosecution in lieu of administrative action by the Agency. The disciplinary action taken by the Agency was an

official reprimand. The official reprimand did not state that the Douglas Factors were considered, or that the action official considered the Appendix to EPA Order 3120.1. The disciplinary action in this case does not address the fact that this employee admitted to using a Government position to obtain information to write a book on emergency and terrorism preparedness, as discussed above. For that offense, the employee only received a written warning when EPA Order 3120.1 specifies it should have been at least a 14-day suspension.

## **Conclusion**

While EPA needs to act quickly and decisively when EPA employees do not adhere to the principles of ethical conduct, there are practical impediments that prevent it from taking action within 30 days. However, EPA can take interim measures to prevent the misconduct from reoccurring and protect EPA funds. Those interim measures should be reported to the OIG pending any final decision. While the Agency has certain latitude in determining disciplinary actions, such actions should be commensurate with the misconduct, particularly in accordance with EPA Order 3120.1 and the Douglas Factors. Improved communications between the Agency and the OIG during the disciplinary process should help to facilitate the Agency's fact-finding steps. Improved communications should also address any outstanding concerns or questions, provide sufficient facts upon which commensurate action can be taken, and decrease the overall time needed for the Agency to determine the appropriate disciplinary action to take.

## **Recommendations**

We recommend that the EPA Deputy Administrator:

1. Re-evaluate the 30-day reporting requirement on Reports of Investigation to consider a timeframe more in line with the length of time necessary to accomplish EPA's disciplinary process.
2. In cases when the Agency is unable to meet established timeframes, provide the OIG with an action plan that includes any interim action taken to minimize the risks of continued misconduct pending final disciplinary action. To ensure the action plan and timelines are being met, implement a system to adequately track and monitor the progress of the disciplinary action process.
3. Assure that disciplinary actions taken in employee integrity and misconduct cases are sufficient and appropriate. Such steps may include the use of an independent review board or other party to assess whether or not the action taken is in accordance with established EPA employee discipline policies and the Douglas Factors and are in the best interests of the U.S. Government.

## **Agency Response and OIG Comments**

The Agency generally agreed with our recommendations, and its complete response is in Appendix D. However, we would like to see the Agency make more of a commitment to dealing with employee misconduct.

Regarding Recommendation 1, the Agency stated: “We believe it is appropriate to update EPA Manual 6500 to better reflect the actual time needed.” We appreciate this response, but suggest that the Agency establish a date when a revision of EPA Manual 6500 will be completed.

For Recommendation 2, EPA said action officials should be “encouraged” to notify OIG of interim measures, and also develop a system to track and monitor disciplinary actions. We believe the Agency should implement a directive “requiring” action officials to notify the OIG, rather than to only “encourage.” EPA should advise us when the system will be completed.

In response to Recommendation 3, the Agency stated:

*While we appreciate the information provided, we think that this is an area that we would like to explore further before we put any new mechanisms in place. For greater than 75% of the cases reviewed, your staff assessed the disciplinary action to be appropriate to the misconduct identified. For the remaining 6, you have identified a concern that the disciplinary action was too lenient and recommend that EPA establish an independent review board to review all disciplinary actions. We would like the opportunity to identify additional options to address this issue. Given the relatively low percentage of cases of concern a less time consuming and less costly solution may be appropriate... A more effective approach may be to explore modifying our current leadership development program and mentoring and coaching activities to emphasize to supervisors and managers the importance of holding employees accountable for performance and conduct issues.*

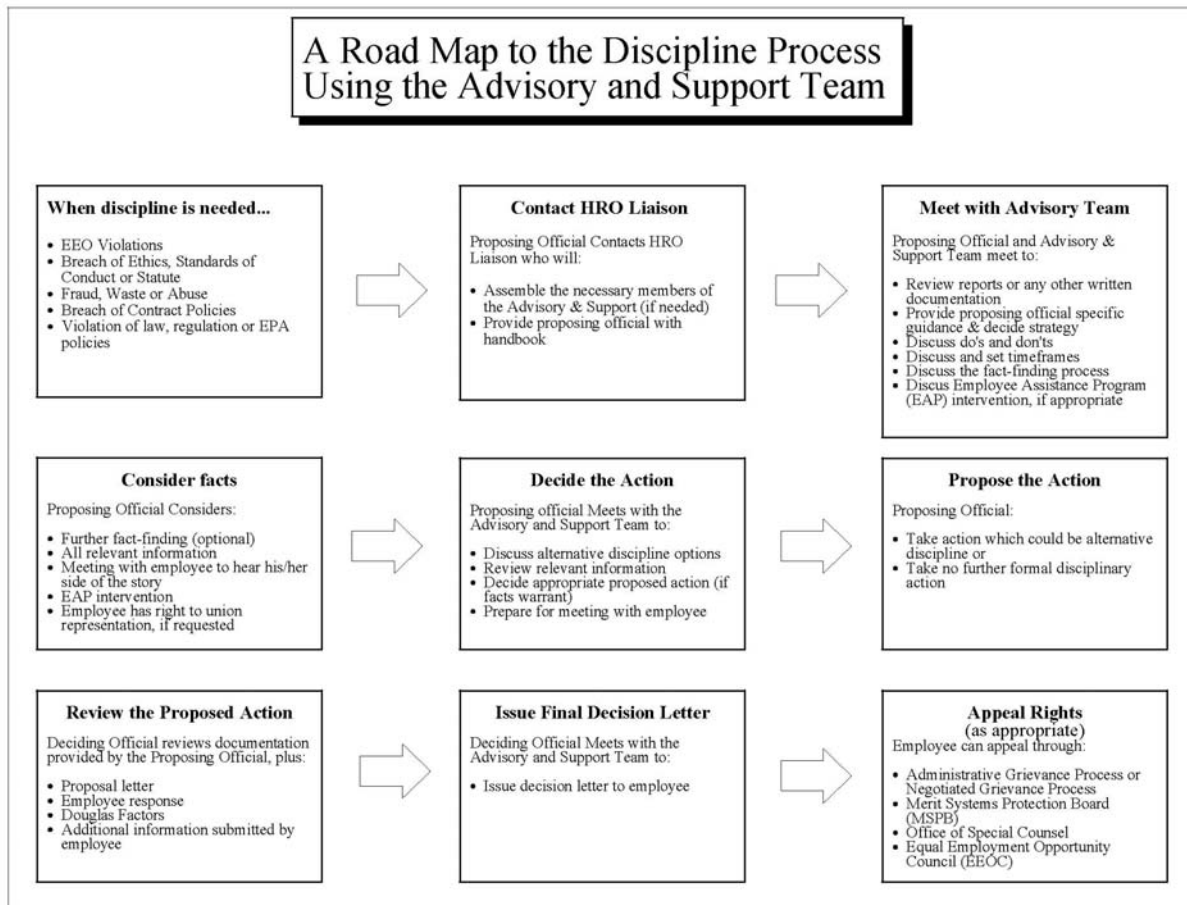
As reported, EPA took action in 26 cases, but for nearly 25 percent of the cases (6) the actions taken either did not meet the minimum disciplinary action recommended in the guidelines or were not acceptable considering the severity of the misconduct. These findings reflect that in nearly 25 percent of the Agency’s disciplinary actions, Agency management is not considering established guidelines when making decisions or is not objectively considering the totality of facts. While the nearly 25 percent does not represent the majority of the cases reviewed, we still consider it a substantial percentage and is an area of concern. We do not believe that further exploration is necessary. EPA needs to adhere to established minimum guidelines for disciplinary actions. Establishing a review board is one suggestion we are making to ensure EPA management meets standards, and we believe EPA should still consider establishing such a board.

## **Status of Recommendations and Potential Monetary Benefits**

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	7	Re-evaluate the 30-day reporting requirement on Reports of Investigation to consider a timeframe more in line with the length of time necessary to accomplish EPA's disciplinary process.	O	Deputy Administrator			
2	7	In cases when the Agency is unable to meet established timeframes, provide the OIG with an action plan that includes any interim action taken to minimize the risks of continued misconduct pending final disciplinary action. To ensure the action plan and timelines are being met, implement a system to adequately track and monitor the progress of the disciplinary action process.	O	Deputy Administrator			
3	7	Assure that disciplinary actions taken in employee integrity and misconduct cases are sufficient and appropriate. Such steps may include the use of an independent review board or other party to assess whether or not the action taken is in accordance with established EPA employee discipline policies and the Douglas Factors and are in the best interests of the U.S. Government.	O	Deputy Administrator			

<sup>1</sup> O = recommendation is open with agreed-to corrective actions pending  
 C = recommendation is closed with all agreed-to actions completed  
 U = recommendation is undecided with resolution efforts in progress

## EPA's Disciplinary Process



Source: EPA's Disciplinary Process Handbook

## ***The Douglas Factors***

The Merit Systems Protection Board decision, *Douglas vs. Veterans Administration*, 5 MSPR 280, established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. These factors must be considered in determining the severity of the discipline:

- (1) The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) the employee's past disciplinary record;
- (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;
- (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) consistency of the penalty with any applicable agency table of penalties;
- (8) the notoriety of the offense or its impact upon the reputation of the agency;
- (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) the potential for the employee's rehabilitation;
- (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.



## **Table of Offenses and Penalties**

The following excerpts from the Appendix to EPA Order 3120.1, *Conduct and Discipline*, identify certain offenses and suggested penalties. This table is a guide for supervisors to facilitate comparable action throughout the Agency in comparable cases. While penalties for offenses will usually fall within the ranges indicated, in unusual circumstances, greater or lesser penalties may be applied unless otherwise provided by law. The list of offenses in this table is not meant to be all inclusive. For offenses not listed, penalties may be imposed which are consistent with penalties listed in the table for offenses of comparable gravity.

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<b>1. Attendance related offenses.</b>			
<b>a.</b> Unexcused tardiness. This includes delay in reporting at the scheduled starting time, returning from lunch and returning after leaving work station on official business. 4th offense may warrant 5-day suspension to removal.	Oral admonishment	Oral admonishment to 1-day suspension	Oral admonishment to 5-day suspension
<b>b.</b> Absence without leave (AWOL). These penalties generally do not apply to AWOL charged for tardiness of 1.2 hour or less. (see 1a above.) This offense includes leaving the work station without permission. Penalty depends on length and frequency of absences. If absence exceeds 5 consecutive work days, employee may be removed at any time.	Written reprimand to 5-day suspension	1-day to 14-day suspension	5-day suspension to removal
<b>c.</b> Failure to follow established leave procedures.	Written reprimand to 5-day suspension	1-day to 5-day suspension	5-day suspension to removal
<b>7. Conduct which is generally criminal, infamous, dishonest, immoral or notoriously disgraceful.</b>	Written reprimand to removal	30-day suspension to removal	removal
<b>8. Abusive or offensive language, gestures, or other conduct. (Also see "Discourtesy," 9 below.)</b>	Written reprimand to 10-day suspension	5-day suspension to removal	30-day suspension to removal
<b>9. Discourtesy to the public.</b>	Oral admonishment to 5-day suspension	Written reprimand to 10-day suspension	10-day suspension to removal
<b>10. Stealing, actual or attempted; unauthorized possession of Government property or property of others.</b>			
<b>a.</b> Where substantial value is not involved.	Written reprimand to 30-day suspension	14-day suspension to removal	removal
<b>b.</b> Where substantial value is involved.	Written reprimand to removal	removal	

Nature of Offense	1st Offense	2nd Offense	3rd Offense
<b>11. Using Government property or Government employees in duty status for other than official purposes.</b> Penalty depends on the value of the property or amount of employees' time involved, the nature of the position held by the offending employee, and other factors. (For misuse of Government vehicles, see 43 below.)	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal
<b>12. Use of official authority or information for private gain.</b>	14-day suspension to removal	removal	
<b>13. Failure to obtain required clearance of an official speech or article.</b>	Written reprimand to 5-day suspension	5-day to 14-day suspension	14-day suspension to removal
<b>14. Engaging in private business activities which result in or create the appearance of a conflict of interest.</b>	Written reprimand to removal	20-day suspension to removal	removal
<b>15. Misuse of official Government credential.</b>	Written reprimand to removal	5-day suspension to removal	1-day suspension to removal
<b>16. Deliberate misrepresentation, falsification, concealment, or withholding of a material fact, or refusal to testify or cooperate in an official proceeding.</b>	Written reprimand to removal	5-day suspension to removal	14-day suspension to removal
<b>17. Loss or damage to Government property, records, or information. (Also see 44.)</b> Penalty depends on value of property or extent of damage, and degree of fault attributable to the employee.	Oral admonishment to removal	Written reprimand to removal	5-day suspension to removal
<b>27. Forging or falsifying official Government records or documents.</b>	Written reprimand to removal	removal	
<b>30. Conducting personal affairs while in duty status.</b>	Written reprimand to 1-day suspension.	2-day to 10 day suspension.	30-day suspension to removal
<b>31. Falsifying time and attendance records for oneself or another employee.</b>	Written reprimand to removal	10-day suspension to removal	removal

## ***Agency Response***

April 6, 2007

### **MEMORANDUM**

**SUBJECT:** Comments on OIG Draft Report on EPA Employee Actions

**TO:** Larry Valett, Director, Financial Fraud Directorate,  
Office of Inspector General

**FROM:** Marcus C. Peacock

Thank you for the opportunity to review this preliminary report and to provide comments which we believe will add to the accuracy and utility of the recommendations. As you accurately note in the report, "employee misconduct cases are assigned a high priority by the Agency" and "EPA has taken disciplinary actions in all employee misconduct cases when warranted".

You have provided two recommendations specific to EPA's timeliness in taking disciplinary actions and one recommendation related to the nature and appropriateness of the disciplinary action itself. My comments are as follows:

1. Re-Evaluate the 30 day reporting requirement:

We agree that EPA officials responsible for implementing disciplinary or corrective action (action officials) are generally not able to take those actions within 30 days of the date they receive an Office of Inspector General (OIG) Report of Investigation (ROI). The drafting, review, and adjudication of disciplinary actions involves multiple Agency officials (HR, OGC/ORC, etc.), and may take longer than 30 days. We believe it is appropriate to update EPA Manual 6500 to better reflect the actual time needed.

2. Interim Measures:

We agree that in situations involving allegations of serious misconduct, action officials should consider taking interim measures (e.g., temporary reassignment of duties) pending a final disposition on the allegations. While interim measures may be routinely considered by action officials, action officials should be encouraged to notify OIG of such interim measures. EPA will develop a system to track and monitor disciplinary actions.

3. Appropriateness of Disciplinary Action Chosen:

While we appreciate the information provided, we think that this is an area that we would like to explore further before we put any new mechanisms in place. For greater than 75% of the cases reviewed, your staff assessed the disciplinary action to be appropriate to the misconduct

identified. For the remaining 6, you have identified a concern that the disciplinary action was too lenient and recommend that EPA establish an independent review board to review all disciplinary actions. We would like the opportunity to identify additional options to address this issue. Given the relatively low percentage of cases of concern a less time consuming and less costly solution may be appropriate.

A more effective approach may be to explore modifying our current leadership development program and mentoring and coaching activities to emphasize to supervisors and managers the importance of holding employees accountable for performance and conduct issues.

Again, thank you for the opportunity to provide comments and suggestions at this early stage. I hope you find them constructive and would welcome the opportunity to discuss these issues in further detail.

## ***Distribution***

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