




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

OCT 1 - 2014

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: OECA Response to OIG Report 13-P-0435 –
The EPA Should Assess the Utility of the Watch List as a Management Tool

FROM: Cynthia Giles 

TO: Arthur A. Elkins Jr.
Inspector General

The Office of Enforcement and Compliance Assurance (OECA) has completed its evaluation of the Watch List in response to the Office of Inspector General (OIG) report, *The EPA Should Assess the Utility of the Watch List as a Management Tool*, Report No. 13-P-0435, September 30, 2013. As a result of the evaluation, OECA has decided to discontinue the Watch List. Our review found that the Watch List is not an up to date approach for tracking the most important violators, is too rigid and static to provide the most helpful information to managers, and that the burdens of maintaining and updating the data were greater than the overall benefits.

Our review also identified some management needs to identify and track the most important violations; however, we think there are ways those functions could be built into the functionality of our updated compliance data systems. In addition to allowing more tailored use of our data systems by EPA staff, these new approaches could increase accountability and transparency in identifying the compliance status of facilities of greatest interest to communities. We intend to work with our state and tribal partners to develop this new approach. In addition to tracking significant noncompliance (SNC) and High Priority Violations (HPV) facilities, our new approach will incorporate improvements identified in EPA's assessment process and by the OIG in its report.

Please see the attached assessment for more information. We believe this assessment satisfies our commitments under the subject report and are therefore closing all corrective actions for this report in MATS. If you have any questions regarding this response, please contact Gwendolyn Spriggs, the OECA Audit Liaison, at 202-564-2439.

Attachment – Watch List Assessment

Watch List Assessment

9/30/14

Introduction

In response to the recommendations in the Office of Inspector General (OIG) report, *The EPA Should Assess the Utility of the Watch List as a Management Tool*, Report No. 13-P-0435, September 30, 2013, the Office of Enforcement and Compliance Assurance (OECA) committed to evaluate the utility of the Watch List as a management tool and identify next steps as appropriate by September 30, 2014. As part of the Watch List evaluation, the Office of Compliance (OC) in the Office of Enforcement and Compliance Assurance solicited feedback from Headquarters and regional management on: the use and effectiveness of the Watch List as a management tool for tracking high priority violations (HPV) and significant non-compliance (SNC); improving the timeliness and appropriateness of associated enforcement responses; the major concerns with or limitations of the Watch List; alternative management tools and/or practices; and desired functionality in any future management tool.

This assessment provides a discussion of the history of the Watch List, the feedback received during the assessment of the Watch List, and identification of next steps.

Watch List Background

The EPA launched the Watch List in January, 2004. The Watch List was identified as a management tool to enhance the enforcement program's ability to identify and track enforcement response decisions for facilities with serious violations and no apparent formal enforcement response under the Clean Air Act (CAA), the Clean Water Act (CWA), and the Resources Conservation and Recovery Act (RCRA). The Watch List tracked facilities with significant violations that had been pending for a specified duration of time. By providing this functionality, the Watch List was intended to be a tool to facilitate discussion between the EPA, the states, and local agencies. The Watch List provided EPA with a means of overseeing that the states and local agencies were following the policy guidelines for serious violations.

The policy frameworks underpinning the Watch List are defined in the EPA enforcement response policies (ERPs). The ERPs identify the subset of violations identified by the states, local agencies and tribes that are considered the most significant. By 2013, the Watch List had been running for nearly ten years, and during this time there had been significant changes to the underlying enforcement response policies, the data systems that collect enforcement related information, and the data systems that publish enforcement information. Those policy and data system changes were not reflected in the Watch List, which led to disconnects between policy expectations and the data produced by the Watch List. In late 2013, the EPA put the Watch List on hold because the data systems that were producing it (namely the Integrated Data for Enforcement Analysis mainframe system and Online Tracking Information System website) were taken offline as part of a major system modernization effort.

Watch List Evaluation

To gather information on the utility of the Watch List, OC asked EPA Headquarters and regional enforcement programs for input on the Watch List, including their opinions on how effective the Watch List was; what they are currently doing to track SNCs/HPVs; their level of interest for future SNC/HPV tracking functionality; and what functionality or features they would like to have should the Watch List be discontinued. While opinions varied, overall there was agreement that the Watch List had a number of significant limitations:

- The Watch List, which focuses on core enforcement work of the states, local agencies and tribes, often does not reflect the National Enforcement Initiatives (e.g., CSOs, SSOs, storm water, and CAFOs);
- State data entry errors artificially expanded the list;
- The list did not include minor facilities for the CWA that had effluent violations with significant health impacts;
- CWA Discharge Monitoring Report non-receipts overshadowed other CWA violations;
- There were issues with addressing actions not removing facilities from the Watch List;
- Pilot criteria that were a component of the CWA Watch List were confusing;
- The RCRA listing criteria did not match the revised ERP;
- Regions with a small number of facilities did not need the Watch List to track serious violations;
- In some states the Watch List might be a negative incentive to identify and report SNC/HPV;
- The Watch List was not timely;
- The Watch List duplicated efforts with the State Review Framework metrics; and
- The list itself was lacking key contextual information about why facilities were on the Watch List.

Based on this feedback, there was agreement that the Watch List should be discontinued. However, the assessment also revealed that some of the functions of the Watch List, adapted to be more flexible, targeted and tailored to the individual user, would be of value. First line supervisors expressed the greatest interest in these functions. Water enforcement staff also expressed greater interest in these functions than did staff in other enforcement programs. Rather than have a Watch List, the consensus was that the capacity to create reports within the compliance data bases would best serve management needs at both the state and federal level, and would increase transparency to the public, in ways that were most relevant to communities. Almost all regions were supportive of having management reports, including unaddressed HPV/SNC status and duration in the Enforcement and Compliance History Online (ECHO) web site, and making HPV/SNC status sortable/searchable in ECHO. Most regions were supportive of allowing tracking for individual enforcement actions and for identifying facilities that are about to become, but are not yet, overdue.

Conclusion

The assessment process was very useful in evaluating the Watch List and identifying issues and concerns, as well as opportunities to move in a new direction. The strong majority view was that the Watch List should be discontinued, and that is the decision OECA has made. However, the process also identified pieces of the Watch List that were helpful, and new approaches for developing a much better, more flexible and more transparent tool to identify the most significant violations for federal and state attention.

For these reasons, OECA will be developing a more up to date, tailored and useful approach that is also less burdensome. The new management tracking tool will be created within ECHO Gov that the EPA and states can use to pull reports for regular discussions about SNC/HPV. EPA will develop a management tracking tool for each media program that lists facilities with SNC/HPV and will solicit input from our state, local and tribal partners on the design of the tool. The Office of Compliance will add unaddressed SNC/HPV status into reports in ECHO Gov and search functionality for identifying unaddressed SNC/HPV facilities in the public version of ECHO. The new product will build off the valuable aspects of the past Watch List format while also leveraging new technology and better mirroring existing EPA policies. This new tool should provide a full accounting of unaddressed and serious violators – enabling EPA to assist states in improving enforcement performance, substantially reducing the number of data errors in ECHO, and making the process more efficient.