



ENVIRONMENTAL PROTECTION

Additional Action Needed to Improve EPA Data on Informal Enforcement and Compliance Assistance Activities

Accessible Version

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Why GAO Did This Study

Enforcing environmental laws and regulations, including those governing water, air, and hazardous waste, is a central part of EPA's mission. In partnership with states, EPA oversees compliance with these requirements for about 800,000 regulated entities, such as refineries and sewage treatment plants. OECA carries out much of EPA's compliance and enforcement responsibilities through the agency's 10 regional offices. OECA has a range of compliance assistance, compliance monitoring, and enforcement tools available to elicit compliance with laws and regulations from regulated entities. These tools include conducting on-site inspection, training staff and providing technical assistance, developing cases, and issuing warning letters.

GAO was asked to review EPA's enforcement efforts. This report examines, among other objectives, the types of information EPA collects on its compliance assistance, compliance monitoring, and enforcement actions. GAO analyzed written responses to its questions from all 10 regional offices, reviewed agency documents and databases, and interviewed EPA officials in headquarters and regional offices.

What GAO Recommends

GAO is making three recommendations to EPA, including that it should clearly document in guidance to its regional offices that they should collect data on compliance assistance activities and informal enforcement actions and specify which mechanism to use to maintain compliance assistance data. EPA agreed with GAO's recommendations and stated that the agency has either begun to or plans to implement them.

View [GAO-20-95](#). For more information, contact J. Alfredo Gómez at (202) 512-3841 or gomezj@gao.gov

ENVIRONMENTAL PROTECTION

Additional Action Needed to Improve EPA Data on Informal Enforcement and Compliance Assistance Activities

What GAO Found

The Environmental Protection Agency (EPA) collects a range of information on compliance and enforcement such as data on inspections, violations, and enforcement actions. The agency uses these data to manage its efforts and assess progress in meeting the agency's strategic objectives. In an August 2018 memorandum, EPA's Office of Enforcement and Compliance Assurance (OECA) reported a key strategic change to increase compliance assistance activities (e.g., training) and informal enforcement actions (e.g., warning letters). However, the agency does not consistently collect or maintain data on either type of action (see figure). Specifically, OECA has not directed regional offices to collect or report data on compliance assistance activities since 2012 and, consequently, does not have guidance instructing regional offices to collect such data and specifying which mechanism offices should use to maintain these data. Also, the agency did not provide guidance to those offices defining informal enforcement actions or how to maintain data on them until September 30, 2019, but the guidance does not specify how to collect data on such actions. By clearly documenting in guidance how the offices should use the definition to collect data on such actions, EPA could more consistently collect these data.

Types of Oversight and Status of Data Collection of Such Oversight by EPA's Office of Enforcement and Compliance Assurance

Type of oversight	Status of data collection	Examples
Compliance assistance	 EPA does not require the collection of these data	Telephone calls and training
Compliance monitoring	 EPA requires the collection of these data	On-site inspections, off-site evaluations, and investigations
Informal enforcement actions	 EPA requires the collection of some data	Warning letters and notices of violation
Formal enforcement actions	 EPA requires the collection of these data	Judicial actions and administrative orders

Source: Environmental Protection Agency (EPA). | GAO-20-95

Note: The collection of informal enforcement data varied across different EPA programs due to differing definitions of informal enforcement actions until EPA's September 30, 2019, guidance providing a single definition.

As the figure shows, OECA does not require regional offices to collect data on compliance assistance or complete data on informal enforcement actions. Having complete information about its compliance assistance activities and informal enforcement is essential because EPA has elevated the role of such activities in its overall enforcement efforts. However, because EPA is not consistently collecting these data, the agency cannot be sure it is achieving its strategic objectives. EPA would have better assurance it has the information it needs by clearly documenting in guidance to the regional offices that they should:

- collect data on compliance assistance activities and informal enforcement actions and
- specify which mechanism to use to maintain compliance assistance data.

By doing so, EPA would have better assurance that the regional offices consistently collect and maintain these data in order to track progress toward the agency's strategic objective of increasing the use of such activities and actions.

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Abbreviations

ECHO	Enforcement and Compliance History Online
EPA	Environmental Protection Agency
ICIS	Integrated Compliance Information System
OECA	Office of Enforcement and Compliance Assurance

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January 31, 2020

Congressional Requesters

According to the Environmental Protection Agency (EPA), entities that unlawfully release or expose communities or individuals to toxic emissions and chemicals can damage the environment and cause chronic illnesses and even deaths. A central part of EPA’s mission to protect human health and the environment is enforcing environmental laws and regulations, including those related to water, air, and hazardous waste.¹ In many instances, EPA has delegated authority to, or authorized, states to implement and enforce federal environmental requirements. EPA, in partnership with these states, oversees about 800,000 entities’ compliance with these requirements.² According to EPA, these regulated entities include petroleum refineries, factories, small businesses, sewage treatment plants, and local governments. EPA decides how to promote compliance with regulations, deter noncompliance by taking enforcement actions, tailor efforts to encourage voluntary compliance, and inform regulated entities of regulatory requirements. In its most recent strategic plan, issued in 2018, EPA described a change in its approach to the agency’s overall compliance and enforcement program that included, among other things, a goal of increasing the agency’s use of compliance assistance activities—for example, training and technical assistance—to help regulated entities comply with laws and regulations.³

EPA’s Office of Enforcement and Compliance Assurance (OECA) carries out the agency’s environmental compliance and enforcement

¹EPA enforces a range of environmental laws. This report focuses on the Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and Safe Drinking Water Act. These laws authorize EPA to issue regulations to implement them. Regulations are mandatory requirements for entities subject to the laws.

²We refer to these entities throughout this report as regulated entities. EPA officials responsible for compliance and enforcement stated that the number of 800,000 regulated entities is a rough estimate based on available data across multiple programs and databases.

³Environmental Protection Agency, *Working Together: EPA FY 2018-2022 U.S. EPA Strategic Plan*, EPA-190-R-18-003 (Washington, D.C.: February 2018). EPA updated this plan in September 2019.

responsibilities.⁴ OECA's headquarters provides overall direction to the agency's regional offices and authorized states on compliance monitoring and enforcement policies and sometimes takes enforcement action.⁵ OECA carries out much of its compliance monitoring, compliance assistance, and enforcement responsibilities through its 10 regional offices around the country.⁶ OECA staff in headquarters and in regional offices are responsible for monitoring compliance by inspecting regulated entities and tracking violations; taking enforcement actions, such as sending notices of violation and developing administrative, civil, and criminal cases against violators; providing compliance assistance, such as training and technical assistance to regulated entities; and overseeing the enforcement programs of authorized states, where applicable. OECA collects data to monitor compliance and track enforcement actions and to manage and assess the performance of its overall compliance and enforcement program.

EPA recently made some changes to its compliance and enforcement approach, including refocusing its efforts from enforcement to compliance and working more closely with states in planning a range of compliance and enforcement efforts to increase compliance among regulated entities.⁷ Specifically, in EPA's strategic plan for fiscal years 2018 through 2022, the agency stated that its priorities and goals include ensuring

⁴In fiscal year 2018, OECA had a budget of approximately \$534 million (of EPA's approximately \$8.8 billion) and a workforce of about 2,700 full-time equivalent staff.

⁵According to a 2018 EPA briefing document describing OECA's role and responsibilities, authorized states handle the majority of enforcement actions against regulated entities. Authorized states are states that have applied for and been approved by EPA to implement a federal regulatory program or implement a state regulatory program in lieu of the federal program. According to this document and OECA officials, OECA headquarters staff participate in developing some civil and criminal judicial cases and work with the Department of Justice, U.S. Attorneys, and states to prosecute cases. In addition to these cases in court, EPA may bring administrative enforcement actions.

⁶EPA's regional offices are responsible for a majority of administrative and civil judicial cases related to violations of environmental laws. In addition, according to EPA officials, the EPA criminal program maintains a field presence across the United States to investigate the most serious of environmental crimes. In fiscal year 2018, more than 70 percent (approximately 2,000 full-time equivalent staff) of OECA's workforce was located in the regional offices.

⁷We reported in October 2017 that agencies generally have the flexibility to tailor their compliance and enforcement strategies and that agency officials decide on the appropriate mix of compliance assistance, together with monitoring and enforcement efforts, to achieve regulatory outcomes. See GAO, *Federal Regulations: Key Considerations for Agency Design and Enforcement Decisions*, [GAO-18-22](#) (Washington, D.C.: Oct. 19, 2017).

compliance with the law and developing a more collaborative partnership with authorized states. To meet the goals in EPA's strategic plan, every few years OECA has developed national initiatives to focus its compliance and enforcement resources, including staff and funding, on its strategic objectives.⁸

In 2018, to help EPA achieve the strategic plan's goal of ensuring compliance with the law, OECA refocused how it describes its national initiatives from national enforcement initiatives to national compliance initiatives.⁹ In OECA's 2019 policy memorandum announcing the national compliance initiatives for fiscal years 2020 through 2023, OECA stated that this change in focus conveys the overarching goal of increased compliance and the use of not only formal enforcement actions (e.g., civil actions), but also other compliance tools that include compliance assistance, self-audits by regulated entities, and informal enforcement actions (e.g., warning letters).¹⁰ OECA also stated in this 2019 policy memorandum that while compliance assistance would be a feature in increasing compliance, formal enforcement would remain important for addressing serious noncompliance and creating general deterrence. Furthermore, to address the goal in EPA's strategic plan of developing a more collaborative partnership between the agency and authorized states,¹¹ OECA in 2019 issued final guidance to regional offices,

⁸The national initiatives, according to EPA memoranda, represent specific environmental problems that help EPA focus its compliance and enforcement resources. For example, a past national initiative was to keep raw sewage and contaminated stormwater out of U.S. waterways.

⁹Environmental Protection Agency, *Transition from National Enforcement Initiatives to National Compliance Initiatives* (Washington, D.C.: Aug. 21, 2018). According to this 2018 memorandum, for about 10 years prior to fiscal year 2011, national enforcement initiatives work was called "National Priorities," with other names used earlier. In addition, EPA stated in the memorandum that it would identify priorities every 4 years instead of every 3 years as the agency had done prior to 2018.

¹⁰Environmental Protection Agency, *FY2020-FY2023 National Compliance Initiatives* (Washington, D.C.: June 7, 2019).

¹¹In September 2019, EPA updated the strategic plan for fiscal years 2018 through 2022 (that had been initially issued in early 2018) and revised its goals to the following: (1) developing more effective partnerships by providing certainty to states and others in carrying out shared responsibilities; (2) increasing certainty, compliance, and effectiveness by applying the rule of law to achieve more efficient and effective agency operations, service delivery, and regulatory relief; and (3) delivering a cleaner, healthier environment for all Americans and future generations by carrying out the Agency's core mission.

superseding interim guidance it issued in 2018.¹² This guidance included expectations for regional offices to, among other things, enhance communication and jointly plan the enforcement actions EPA or a state will initiate.

We last reported on EPA's overall enforcement efforts in July 2007 when we reported on the EPA–state partnership to enforce environmental laws.¹³ At that time, we found that EPA had improved its oversight of state enforcement programs by implementing a consistent approach for overseeing states. However, we also found that EPA could take additional steps to ensure more consistent state performance and oversight of state enforcement programs. We recommended that the agency take a number of actions regarding its review of state programs. EPA generally agreed with these recommendations and implemented them. We also recommended that EPA conduct a comprehensive review of its regional enforcement programs to address inconsistencies among the regional offices in enforcement actions. EPA generally agreed with this recommendation, but the agency has not yet taken actions to implement it.

You asked us to review EPA's enforcement efforts, and this report is the first in response to your request.¹⁴ Our objectives were to examine (1) the types of information EPA collects on its compliance monitoring, compliance assistance, and enforcement actions; and (2) the ways in which EPA communicates, to the public and Congress, the results of its compliance activities and enforcement actions.

To address both objectives, we reviewed EPA guidance and policy memoranda, past GAO and EPA Office of Inspector General reports, EPA's enforcement and compliance annual results reports, annual performance reports, and other agency documents. We focused the

¹²Environmental Protection Agency, *Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work* (Washington, D.C.: July 11, 2019). EPA issued interim guidance in 2018. Environmental Protection Agency, *Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States* (Washington, D.C.: Jan. 22, 2018).

¹³GAO, *Environmental Protection: EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancement*, [GAO-07-883](#) (Washington, D.C.: July 31, 2007).

¹⁴We have ongoing work on changes to EPA's enforcement strategies, processes, and approaches for coordinating with states. We split our work under this request into separate reports due to substantial ongoing delays in receiving information from EPA.

scope of this report on the four primary laws OECA is responsible for enforcing: Clean Water Act, Clean Air Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act.¹⁵

To examine the types of information EPA collects on its compliance activities and enforcement actions, we collected information about the databases and websites EPA uses to maintain and present its enforcement data. Specifically, we reviewed EPA documents and interviewed EPA officials about the purpose, uses, and limitations of the data in the Integrated Compliance Information System (ICIS) database, which contains compliance and enforcement data, and the Enforcement and Compliance History Online (ECHO) website, a public access website that stores and integrates data from multiple EPA databases.¹⁶ We also interviewed relevant EPA officials about statute- and regional office-specific databases. However, we did not make a determination about the reliability, completeness, and accuracy of specific data in these databases because we present an analysis of the types of data that EPA collects rather than an analysis of the compliance or enforcement data themselves. Although we did not make a determination about the reliability of specific data in ICIS or on the ECHO website, EPA has publicly reported on limitations to the data. Specifically, EPA's ECHO website includes a section that describes known data problems. For example, the website states that EPA and the state agencies that report data to EPA have identified some data issues that may impact the completeness, timeliness, or accuracy of the data shown in ECHO.

We interviewed OECA headquarters staff about the type of data the agency collects and the primary ways the agency uses these data. We sent a list of questions to all 10 EPA regional offices about their collection and use of compliance and enforcement data as well as limitations in the use of these data, and we analyzed their written responses.¹⁷ We also conducted telephone or in-person interviews with officials in all 10

¹⁵EPA also enforces requirements under the Federal Insecticide, Fungicide, and Rodenticide Act, Toxic Substances Control Act, and other laws.

¹⁶EPA's ECHO website can be accessed at <https://echo.epa.gov/>.

¹⁷We initially set up interviews with EPA officials at all 10 regional offices and sent them a list of questions for the purpose of conducting those interviews. EPA's Office of Congressional and Intergovernmental Relations intervened to postpone those interviews and instead informed us that they would gather, review, and provide the requested information in written form in order to protect EPA's confidentiality interests. These changes caused a significant delay in our work.

regional offices to further explore their collection and use of compliance and enforcement data, among other things, and to follow up on their written responses to our questions.¹⁸

We interviewed representatives of five organizations representing some of the regulated entities to obtain their perspectives on a range of issues related to enforcement.¹⁹ We selected these organizations based on EPA's public information about the types of entities it regulates, and used the information to help develop topics for regional interviews. Because this was a nonprobability sample of such organizations, the representatives' views are not generalizable to all such organizations but provide examples of the views of regulated entities. Finally, we compared EPA's efforts for collecting data against federal standards for internal control related to the design of control activities and the use of quality information and against a selection of our leading practices for regulatory approaches.²⁰

To examine the ways in which EPA communicates to the public and Congress, the results of its compliance activities and enforcement actions, we reviewed OECA's annual reports and presentations on data describing annual results. We compared EPA's efforts in reporting data against a selected leading practice for transparently reporting government data and EPA guidance on communicating environmental data.²¹

¹⁸After providing written responses, EPA subsequently made the Director of Enforcement and Regional Counsel in each regional office available to answer our follow-up questions by telephone or in person. In some cases, additional managers and officials participated in these meetings.

¹⁹We interviewed representatives from the following organizations: American Public Power Association, American Water Works Association, Associated General Contractors of America, Independent Petroleum Association of America, and National Association of Clean Water Act Agencies. We also interviewed the Environmental Council of States, a national association of state and territorial environmental agency officials.

²⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). From [GAO-18-22](#), our October 2017 report on regulatory approaches, we selected leading practices for regulatory approaches that were most relevant to the particular challenges we identified during the course of this work. Our selection of leading practices includes the transparency and accessibility of data.

²¹Environmental Protection Agency, *EPA Quality Manual for Environmental Programs*, CIO 2105-P-01-0 (Washington, D.C.: May 2000) and GAO, *Open Data: Treasury Could Better Align USAspending.gov with Key Practices and Search Requirements*, [GAO-19-72](#) (Washington, D.C.: Dec. 13, 2018). We selected the most relevant leading practice for transparently reporting government data: fully describing data.

We conducted this performance audit from October 2018 to January 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

OECA has a range of compliance monitoring, compliance assistance, and enforcement tools available to elicit compliance with laws and regulations from regulated entities, as shown in table 1.

Table 1: Types of Oversight and Related Activities and Actions

Type of oversight	Activities and actions
Compliance assistance	Providing one-to-one counseling (by telephone or in person) for representatives of regulated entities, technical assistance, information on websites, fact sheets, guides, and training.
Compliance monitoring	Conducting on-site inspections, evaluations, and investigations (including review of permits, data, and other documentation).
Enforcement actions	Conducting a range of actions from contacting regulated entities about noncompliance (letters, notices of violation, citations) to developing civil or administrative cases.
Informal	Issuing warning letters and notices of violation in some cases or any action prior to issuing a formal notice of violation.
Formal	Developing cases for a civil action filed in court and issuing administrative orders.

Source: Environmental Protection Agency. | GAO-20-95

Enforcement actions can result in, among other things, the imposition of penalties, requirements to remedy the violation of law or regulation, or both. OECA has developed policies and guidance for EPA staff that describe the agency's recommended responses to noncompliance based on a number of factors and the escalation of enforcement responses to continuing noncompliance.²² EPA guidance on informal and formal

²²According to EPA's written comments on a draft of this report (see appendix I), these factors include the magnitude, frequency, and impact of instances of noncompliance.

enforcement actions provides an example related to the Resource Conservation and Recovery Act.²³ In that example, if a regulated entity does not return to compliance or notify the state or EPA that it cannot return to compliance within a certain number of days after an informal enforcement action, the state or EPA may take a formal enforcement action. Generally, according to this same 2010 EPA guidance, informal enforcement actions address small or isolated problems, and formal enforcement actions can address bigger problems.

OECA stores and manages a range of compliance monitoring and enforcement data in ICIS. For example, ICIS includes descriptive information about regulated entities, violations, and the outcome of enforcement actions. ECHO, the public access website that integrates data from multiple agency databases, has an internal component for staff and other federal agencies and publicly available components. Staff in EPA's 10 regional offices, OECA headquarters staff, and states input data into ICIS, which feeds data into ECHO. Regional office staff and OECA headquarters staff also use statute-specific databases to maintain data on compliance with a particular law or office-specific databases built to maintain data, according to the preferences of a particular regional or headquarters office.

EPA Collects a Range of Compliance Monitoring and Enforcement Data, but Does Not Maintain Data on Informal Enforcement Actions and Compliance Assistance

EPA requires regional offices to collect and enter a range of information on its compliance monitoring and enforcement activities—such as permit, inspection, and violations data—into the agency's national databases. The agency uses these data to manage its oversight efforts and assess how well the efforts are meeting the agency's strategic objectives. In addition, EPA is piloting an effort to collect data on coordination with states. However, EPA regional offices do not consistently collect or maintain data on informal enforcement actions. In addition, EPA does not require regional offices to collect and maintain data on their compliance

²³Environmental Protection Agency, *Informal and Formal Actions Summary of Guidance and Portrayal on EPA Websites* (Washington, D.C.: July 1, 2010).

assistance activities; therefore, it has no requirements for regional offices to enter data into the agency's national databases.

EPA Requires Regional Offices to Collect Some Data to Manage and Assess Its Oversight Efforts

EPA requires regional offices to collect information from various data sources and enter it into national databases to monitor regulated entities' compliance with environmental laws and track the agency's enforcement actions.²⁴ The information generally includes permit data on limits on emissions or for discharge of pollutants into waters, inspection or other evaluation data, violations data (e.g., failure to take or submit results for drinking water samples); informal enforcement actions, and formal enforcement actions, as shown in figure 1.

Figure 1: Types of Compliance Monitoring and Enforcement Data Collected by EPA's Office of Enforcement and Compliance Assurance

Data collected to monitor compliance
<ul style="list-style-type: none"> ■ Permits ■ Inspections, evaluations, investigations, and record-reviews ■ Violations
Data collected to track <i>informal</i> enforcement actions
<ul style="list-style-type: none"> ■ Notices of violation, in some cases ■ Warning letters
Data collected to track <i>formal</i> enforcement actions
<ul style="list-style-type: none"> ■ Administrative orders (penalties assessed, requirements to remedy violations) or citations ■ Civil and criminal judicial actions

Source: Environmental Protection Agency (EPA). | GAO-20-95

Notes: According to EPA officials, the only permit data the agency collects and maintains are for the National Pollutant Discharge Elimination System (NPDES) program. NPDES permits are required for point sources (e.g., pipe, ditch, channel, or tunnel) that discharge pollutants to waters of the United States (e.g., navigable waters). According to EPA officials, compliance monitoring includes all efforts used to collect information needed to make a compliance determination at a facility or other site. These efforts range from reviews of records to on-site evaluations or inspections. According to EPA's 2010 document on informal and formal enforcement actions, various agency policy guidance and EPA databases define formal and informal enforcement actions differently. For example, the policy guidance for the Clean Air Act defines a notice of violation as a formal enforcement action, but the ECHO website defines it as an informal enforcement action.

OECA uses the data in its databases to manage the overall enforcement and compliance program and assess how well its efforts are meeting the objectives outlined in the agency's strategic plan, according to EPA

²⁴EPA's website indicates the data that regional offices are to enter into national databases which are then fed into ECHO. See <https://echo.epa.gov/resources/echo-data/data-entry-requirements>.

officials.²⁵ For example, officials in one regional office told us that regional managers typically review ICIS data (for example, the number of inspections conducted) to monitor their progress toward meeting strategic objectives at the regional level. These regional officials said that staff in their office conduct monthly reviews of ICIS data to understand how their current efforts on certain indicators compare to prior years.

OECA headquarters officials told us that the agency had begun to pilot a mechanism to collect data that can help measure agency progress in coordinating with states, one of the agency's strategic objectives. Specifically, OECA officials told us that in 2018 the agency began a pilot effort to track instances in which regional office staff provide assistance with state enforcement actions, also characterized as "state assists." According to agency guidance issued in June 2019, a state assist is defined as any instance in which the state could not or would not take the action without OECA's help or any instance in which a state explicitly requests that OECA take over a case after OECA has identified a violation. During the pilot effort, state assists are documented as such when a regional office has expended substantial resources to identify a violation, develop the injunctive relief, or help the state take an action to obtain a remedy for the violation.²⁶

According to OECA guidance, the pilot effort, which OECA officials expect to continue through 2021, will help the agency better track its efforts in this area.²⁷ As of June 2019, according to our analysis of written responses, officials in eight of the 10 regional offices described having documented a state assist as defined by OECA. For example, officials in one regional office stated in their written response to our questions that one specific case against a company located in three different states would have been handled by the regional office. Instead, the regional office agreed to let two of the states take the lead for the cases in those

²⁵In a 2018 policy memorandum, OECA stated that finding reliable national information on compliance rates to assess its progress on national compliance initiatives has been a challenge for the agency. The policy memorandum also stated that the agency would seek state input in piloting new ways to measure progress in meeting the initiatives. Environmental Protection Agency, *Transition from National Enforcement Initiatives to National Compliance Initiatives* (Washington, D.C.: Aug. 21, 2018).

²⁶According to EPA's website, a data element for a state assist has existed in the ICIS data dictionary since 2011. The data dictionary described a state assist as indicating whether EPA assisted with an activity when the state, local, or tribal agency was the lead.

²⁷Environmental Protection Agency, *Office of Enforcement and Compliance Assurance National Program Guidance Fiscal Years 2020-2021* (Washington, D.C.: June 7, 2019).

states, and the regional office handled the case in the third state and documented this as two state assists.

EPA's Regional Offices Do Not Consistently Collect or Maintain Data on Informal Enforcement Actions

OECA collects data on some informal enforcement actions, such as the number of warning letters sent to regulated entities, but EPA regions do not always collect data about these actions, according to EPA headquarters officials. As a result, the data do not tell the full story of OECA's enforcement efforts, according to OECA's Assistant Administrator in testimony during a February 26, 2019, congressional hearing.²⁸

Furthermore, OECA headquarters officials we interviewed said that data on EPA and state informal enforcement actions are incomplete in EPA's ECHO website in part because EPA policy and related guidance for each of the various programs defines informal enforcement differently and these definitions can differ from the definitions in ECHO.²⁹ In a 2010 document, EPA explained how the various agency policy guidance and ECHO define formal and informal enforcement actions differently.³⁰ For example, the document states that policy guidance for the Clean Air Act defines notices of violation as formal enforcement actions, but that policy guidance for the Clean Water Act and the Resource Conservation and Recovery Act defines notices of violation as informal enforcement actions.³¹ Similarly, this same 2010 document states that administrative penalty orders of field citations are considered informal enforcement actions in the policy guidance for the Clean Water Act, but formal enforcement actions in the policy guidance for the Clean Air Act and Resource Conservation and Recovery Act. In addition, the document

²⁸EPA's Enforcement Program: Taking the Environmental Cop Off the Beat," preliminary and unedited transcript of a hearing before the House Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, 116th Congress, February 26, 2019.

²⁹According to a 2010 policy document to states and regional offices on the policy and ECHO definitions for formal and informal enforcement actions, OECA developed a standardized way to display information about informal enforcement actions across programs once the data are fed into ECHO from ICIS. Environmental Protection Agency, *Informal and Formal Actions: Summary of Guidance and Portrayal on EPA Websites* (Washington, D.C.: July 1, 2010).

³⁰Environmental Protection Agency, *Informal and Formal Actions*.

³¹Environmental Protection Agency, *Informal and Formal Actions*.

states that ECHO characterizes notices of violations under the Clean Air Act as informal enforcement actions even though the policy guidance defines them as formal enforcement actions.

OECA headquarters officials highlighted two issues that affect the agency's ability to consistently maintain data on informal enforcement actions: (1) using different definitions of informal enforcement actions across programs and (2) maintaining data on such actions inconsistently. OECA headquarters officials said that they were addressing the first issue of not having one clear definition of informal enforcement actions that applies across all of the air, water, and hazardous waste programs. In September 2019, OECA headquarters officials said EPA was finalizing a single definition of informal enforcement actions for the purpose of collecting more consistent information. In January 2020, EPA provided us with a September 30, 2019, memorandum that defines enforcement response tools, including a definition of informal enforcement action across all programs.³²

Regarding maintaining data inconsistently, while most of the regional offices collect data on some informal enforcement actions, they use different mechanisms to maintain these data. According to our analysis of written responses, officials in nine of the 10 regional offices stated that their offices collect data on some informal enforcement actions such as warning letters, notices of noncompliance, notices of violation, and notices of determination. However, the officials described using different mechanisms for maintaining the data they collect on informal enforcement. For example, officials in five of the nine regional offices that collect data on some informal enforcement actions stated that they maintain the data in ICIS. As we described, ICIS data feeds into ECHO, which has components available to the public. In three of the nine regional offices that collect data on some informal enforcement actions, staff collect data on such actions in a database other than ICIS, such as a statute- or office-specific database, according to our analysis of written responses. Finally, one of the nine regional offices that collect data on some informal enforcement actions maintains those data in paper records, according to an official in that office.

In our October 2017 report on key considerations for agency enforcement decisions, we reported that transparency and availability of data are

³²Environmental Protection Agency, *Guidance on EPA Definitions for Enforcement Response Tools* (Washington, D.C.: Sept. 30, 2019).

important to promoting compliance and achieving regulatory objectives.³³ As described earlier, EPA changed the focus of its national priorities from enforcement to compliance and increased its use of informal enforcement actions to achieve its regulatory objectives. Having complete information about informal enforcement actions is essential because EPA has elevated the role of such activities in its overall enforcement efforts. EPA often works informally with regulated entities to help them comply with environmental laws and regulations, according to its 2018 EPA Enforcement Annual Results report.³⁴ However, the agency does not have complete information on those actions for evaluating its compliance monitoring and enforcement performance. Moreover, more complete and consistent information about OECA's informal enforcement actions would provide a fuller picture of EPA's overall enforcement efforts. This, in turn, would better enable EPA and OECA to assess whether they are achieving the agency's regulatory objectives and improve the transparency of OECA's informal enforcement actions for Congress and the public.

Guidance can help agencies communicate expectations and ensure consistency with a standard. While EPA has issued guidance on how various agency policies and ECHO define formal and informal enforcement actions, the agency has not provided guidance to regional offices on how they should collect or maintain data on informal enforcement actions. According to federal standards for internal control, management should design control activities to achieve objectives and respond to risks, such as by clearly documenting internal control in management directives, administrative policies, or operating manuals.³⁵ On September 30, 2019, EPA issued a memorandum that provides definitions for enforcement response tools, including informal enforcement actions, and instructions on how to report such actions. Now that the agency has finalized its definition of informal enforcement actions and specified which mechanisms to use to maintain data on such actions, by clearly documenting in guidance to the regional offices how they should use the definition to collect data on these actions, EPA would have

³³GAO-18-22.

³⁴Environmental Protection Agency, *Fiscal Year 2018 EPA Enforcement Annual Results* (Washington, D.C.: Feb. 8, 2019), accessed August 26, 2019, <https://epa.maps.arcgis.com/apps/Cascade/index.html?appid=0b9d73f351d648698f63bba3f3b15114>.

³⁵GAO-14-704G.

better assurance that the regional offices consistently collect and maintain these data.

EPA Does Not Require Its Regional Offices to Collect and Maintain Data on Compliance Assistance Activities

According to EPA headquarters officials, OECA stopped requiring regional offices to collect data and report on their compliance assistance activities around 2012.³⁶ Prior to that time, each regional office had a full-time staff member dedicated to coordinating compliance assistance activities, according to these officials. However, the staff member's activities were the only compliance assistance data that regional offices collected and maintained. EPA officials stated that the regional offices stopped collecting the compliance assistance activities associated with this position when the agency redirected the funding for the full-time staff position to compliance monitoring and other enforcement efforts. As a result, EPA officials told us that the agency does not have consistent data about its compliance assistance activities.

EPA officials told us that the agency made a policy decision to stop dedicating funding to compliance assistance but encouraged staff to continue conducting compliance assistance activities as part of the agency's outreach for other programs. EPA headquarters officials said that as of September 2019, the agency had no plans to require regional offices to collect and report data on compliance assistance. However, according to these officials, although the agency stopped funding the compliance assistance coordinator position, regional staff continue to conduct a range of compliance assistance activities as part of their regular enforcement duties. Figure 2 shows the types of compliance and enforcement data that EPA collects, including that the agency does not require regional offices to collect information about compliance assistance.

³⁶EPA's ICIS database has a field for staff to input data on compliance assistance activities.

Figure 2: Types of Oversight and Status of Data Collection of Such Oversight by EPA’s Office of Enforcement and Compliance Assurance

Type of oversight	Status of data collection	Examples
Compliance assistance	 EPA does not require the collection of these data	Telephone calls and training
Compliance monitoring	 EPA requires the collection of these data	On-site inspections, off-site evaluations, and investigations
Informal enforcement actions	 EPA requires the collection of some data	Warning letters and notices of violation
Formal enforcement actions	 EPA requires the collection of these data	Judicial actions and administrative orders

Source: Environmental Protection Agency (EPA). | GAO-20-95

Note: The collection of informal enforcement data varied across different EPA programs due to differing definitions of informal enforcement actions. However, on September 30, 2019, EPA issued guidance defining informal enforcement actions.

According to our analysis of written responses, officials in nine of the 10 regional offices reported that they collect some data on the compliance assistance activities their offices conduct. Officials in one office said that they do not collect data on compliance assistance activities because it is not required. The types of data on compliance assistance that the nine regional offices collect and the methods those offices use for maintaining the data differ, according to our analysis of written responses. For example, some regional officials described collecting data on compliance assistance provided over the telephone, and other officials described collecting data on on-site compliance assistance provided during inspections. According to our analysis of written responses, officials in two regional offices described providing on-site compliance assistance for minor issues during inspections and tracking the number of times such assistance was provided. Officials in the nine regional offices that still collect data on some compliance assistance activities described storing the data differently, either in region-specific databases or in paper files. Officials in two of these regional offices said that regional staff decide how to document telephone calls from regulated entities for assistance. Officials in one region stated that they no longer conduct large-scale compliance assistance activities such as conducting workshops or developing informational materials because EPA eliminated the reporting requirement.

Having complete information about its compliance assistance activities is essential because EPA has elevated the role of such activities in its overall enforcement efforts. However, EPA does not have complete information on its compliance monitoring and enforcement activities, partly because the agency does not require the collection of data on compliance assistance activities. EPA's lack of complete information on its compliance assistance activities is inconsistent with its change in policy. In addition, in our October 2017 report on key considerations for agency enforcement decisions, we reported that transparency and availability of data are important to promoting compliance and achieving regulatory objectives.³⁷ Having complete information about its compliance assistance activities may provide more complete information on those activities for evaluating its compliance monitoring and enforcement performance.

As discussed earlier, most of the regional offices continue to collect some information on compliance assistance even though they are not required to do so and use varying mechanisms to maintain the information. Because EPA does not direct the regional offices to collect data on compliance assistance activities, the agency would not have issued guidance instructing regional offices to collect such data and specifying which mechanism to use to maintain them. However, according to federal standards for internal control, management should design control activities to achieve objectives and respond to risks, such as by clearly documenting internal control in management directives, administrative policies, or operating manuals.³⁸ Without clearly documenting in guidance to the regional offices that they should collect data on compliance assistance activities and specifying which mechanism to use to maintain the data, such as ICIS, EPA will not have the information it needs to track progress toward its strategic objective of increasing the agency's use of compliance assistance activities to help regulated entities comply with laws and regulations.

³⁷[GAO-18-22](#).

³⁸[GAO-14-704G](#).

EPA Communicates the Results of Its Compliance Monitoring Activities and Enforcement Actions to the Public and Congress through a Website and Annual Reports

EPA communicates the results of its compliance monitoring activities and enforcement actions by making data available to the public and Congress through its website and annual reports. EPA's ECHO website allows the public to view data over time, such as the number of facilities inspected by an authorized state or EPA from fiscal years 2011 to 2019.³⁹ To help the public understand the data presented on its ECHO and other websites, EPA websites list a number of national and state-specific known data limitations concerning the data collected for its environmental programs. For example, the ECHO website identifies whether certain years of data are not appropriate for analyzing trends, such as its data on penalties under the Clean Water Act prior to 2015.⁴⁰

EPA issues annual performance reports that include data on compliance monitoring and enforcement to fulfill requirements under the Government Performance and Results Act and other requirements.⁴¹ These reports describe progress toward the three strategic goals and related objectives in *EPA's Fiscal Year 2018-2022 Strategic Plan*. In addition, since 2017, EPA has published a Year in Review report that outlines the agency's accomplishments, including in the area of enforcement, using data on its

³⁹EPA's ECHO website can be accessed at <https://echo.epa.gov/>.

⁴⁰According to EPA's written comments on a draft of this report (see appendix I), this information is on ECHO because EPA lacks comprehensive data on penalties assessed by authorized states prior to 2015. Although our example refers only to what is presented on the ECHO website, EPA noted that this limitation would not affect EPA's annual reports, which do not present trends for authorized states.

⁴¹Environmental Protection Agency, *Fiscal Year 2020 Justification of Appropriation Estimates for the Committee on Appropriations, Tab 14: Program Performance and Assessment*, EPA-190-R-19-002 (Washington, D.C.: March 2019). Since the passage of the Government Performance and Results Act Modernization Act, agencies have been aligning the annual performance plan and report with the agency's congressional budget justification to improve the accessibility and usefulness of agency performance reporting for stakeholders, as well as to reduce the burden of duplicative planning and reporting timelines.

compliance and enforcement actions to present the results of its efforts.⁴² In addition, at the end of each fiscal year, OECA publishes a *Fiscal Year EPA Enforcement and Compliance Annual Results* report and companion data graphs that provide enforcement data over a selected time period on such topics as the number of EPA inspections conducted, cases initiated, and value of fines and penalties collected.⁴³ Environmental groups and media outlets have used EPA's data to develop analyses, conclusions, and inferences about changes in EPA's enforcement results.

In December 2018, we reported that providing information about a dataset—for example, known limitations of the data in that dataset—allows users to determine whether the database is suitable for their intended purpose and make informed decisions about whether and how to use it.⁴⁴ For example, EPA's 2000 *EPA Quality Manual for Environmental Programs* states that published reports with environmental data shall be accompanied by a readily identifiable section or appendix that discusses the quality of the data and any limitations on the use of the data with respect to their original intended application.⁴⁵ It also states that the agency's reports should include applicable statements about possible misuse of the data for other purposes.

EPA's *Fiscal Year 2018 Annual Performance Report* includes a link to companion reports on its website that describe, among other things, the sources of the data used in the report and the known limitations of those data.⁴⁶ Specifically, the companion reports include information such as

⁴²Environmental Protection Agency, *U.S. Environmental Protection Agency Year in Review 2018* (Washington, D.C.: 2018).

⁴³Environmental Protection Agency, *Fiscal Year 2018 EPA Enforcement and Compliance Annual Results* (Washington D.C.: Feb. 8, 2019) and Environmental Protection Agency, *EPA Enforcement Annual Results*, accessed August 26, 2019, <https://epa.maps.arcgis.com/apps/Cascade/index.html?appid=0b9d73f351d648698f63bba3f3b15114>.

⁴⁴GAO-19-72.

⁴⁵Environmental Protection Agency, *EPA Quality Manual for Environmental Programs*, CIO 2105-P-01-0 (Washington, D.C.: May 5, 2000). The manual defines environmental data as measurements or information that describe environmental processes or conditions, or the performance of environmental technology, including treatment systems, pollution control systems and devices, and waste remediation and storage methods. Most of the data EPA collects and publishes on compliance monitoring and enforcement, such as the number of formal enforcement actions and the amount of assessed penalties, do not meet this definition of environmental data.

⁴⁶Environmental Protection Agency, "FY 2018 Data Quality Records," accessed October 10, 2019, <https://www.epa.gov/planandbudget/fy-2018-data-quality-records>.

the definition of terms used, units of measurement, data sources, method for analyzing the data, and the known limitations of the data.

However, neither of EPA's other 2018 annual reports we reviewed fully disclosed known limitations to the data the agency included in each report:

- ***Year in Review 2018***. OECA's *Year in Review 2018* report, the most recent report available at the time of our review, includes a range of data—such as number of actions taken, monetary results, the reduction of emissions in tons, and data over selected time periods—to accompany its statements about the agency's accomplishments. However, the report does not include any information about data sources or known limitations of the data.
- ***Fiscal Year 2018 EPA Enforcement and Compliance Annual Results***. EPA's *Fiscal Year 2018 EPA Enforcement and Compliance Annual Results* report, also the most recent at the time of our review, includes data sources and some known limitations of the data. For example, the report states that the data on results do not include state and local inspections or enforcement actions. Additionally, the report includes statements about changes in how the agency stores data that may prevent the data from being comparable across years. The report lists the various sources of the data used to create the report's charts and graphs. EPA has published known limitations of these data on its ECHO website and indicated that broad data issues may affect the completeness, timeliness, or accuracy of the data in its various systems. However, based on our review of the report, it does not include information about known limitations of all of the data in the report.

In addition, neither the *Year in Review 2018* report nor the *Fiscal Year 2018 EPA Enforcement and Compliance Annual Results* report includes a readily identifiable section or appendix that discusses the known limitations of the data, as called for by leading practices for transparently reporting government data and as exemplified in EPA's manual governing environmental data quality.⁴⁷ In commenting on our assessment of the annual reports, EPA officials did not provide a reason why the reports do not discuss known data limitations but told us in a prior meeting that the current documentation on the ECHO website includes the current known data limitations.

⁴⁷[GAO-19-72](#).

Furthermore, EPA's *Fiscal Year 2018 EPA Enforcement and Compliance Annual Results* report does not fully describe how the data in the report should be interpreted given the known data limitations the report contains. For example, the 2018 annual results report provides a partial picture of overall enforcement of environmental laws because the data exclude state enforcement actions. In addition, for the yearly data across years (2008 through 2018 or 2012 through 2018), EPA does not fully provide information on any limitations in how the data should be analyzed; for example, whether the data are appropriate for the purpose of identifying trends or providing a snapshot of an activity for a single year. EPA does, however, include information on the impact of one or two large cases on the data presented for some data in the report such as the volume of contaminated soil and water to be cleaned up or the treatment and disposal of hazardous and nonhazardous waste.

In our November 2019 report on data transparency, we concluded that without the transparent disclosure of known data limitations, users may view or analyze data without full knowledge of the extent to which the data are timely, complete, accurate, or comparable over time.⁴⁸ Our November 2019 report also concluded that this could lead users to inadvertently draw inaccurate information or conclusions from the data. OECA's Assistant Administrator has discussed the known limitations of EPA's data in the annual reports. In a February 26, 2019, testimony before Congress, OECA's Assistant Administrator stated that the averages for some of the metrics used in EPA's annual results report cannot be interpreted to represent a statistical trend.⁴⁹ OECA's Assistant Administrator also stated that changes in the number of enforcement actions may be a function of changes in programmatic decisions and may not be reflective of changes in the underlying compliance of regulated entities with environmental statutes. By including the known limitations of data in its annual reports and providing information on the intended use of EPA's data, as called for by leading practices for transparently reporting government data and as exemplified in existing EPA guidance for environmental data, EPA would have better assurance that Congress and the public are informed about the data presented and how the data should be interpreted.

⁴⁸GAO, *Data Act: Quality of Data Submissions Has Improved but Further Action Is Needed to Disclose Known Data Limitations*, [GAO-20-75](#) (Washington, D.C.: Nov. 8, 2019).

⁴⁹"EPA's Enforcement Program: Taking the Environmental Cop Off the Beat."

Conclusions

EPA collects a range of information and uses the information to manage its enforcement and compliance program and assess how well its efforts are meeting the objectives outlined in the agency's strategic plan and other documents. However, while most of the regional offices collect data on some informal enforcement actions, they use different mechanisms to maintain these data, and the agency has not provided guidance to regional offices on how they should collect or maintain the data. Without documenting in guidance to the regional offices how they should collect data on informal enforcement actions and specifying which mechanism to use to maintain the data, EPA lacks assurance that the regional offices will consistently collect and maintain these data. On September 30, 2019, EPA issued a memorandum that provides definitions for enforcement response tools, including informal enforcement actions and instructions on how to report such actions. We view this as a step in the right direction. Now that the agency has finalized its definition of informal enforcement actions and provided instructions on how regional offices should report such actions, by clearly documenting in guidance on how regional offices should use the definition to collect data on these actions, EPA would have better assurance that the regional offices consistently collect and maintain these data.

Similarly, EPA does not have complete information on its compliance monitoring and enforcement activities because the agency does not require the collection of data on compliance assistance activities. As a result, the agency has not issued guidance instructing regional offices to collect such data and specifying which mechanism to use to maintain them. Without clearly documenting in guidance to the regional offices that they should collect data on compliance assistance activities and specifying which mechanism to use to maintain the data, such as ICIS, EPA will lack key information. Such information is needed to track progress toward its strategic objective of increasing the agency's use of compliance assistance activities to help regulated entities comply with laws and regulations.

While EPA communicates the results of its compliance monitoring activities and enforcement actions through its website and annual reports, neither of its 2018 annual reports includes a readily identifiable section or appendix that discusses the known limitations of the data. The 2018 annual results report also does not fully describe how the data in the report should be interpreted, given the known data limitations the report

contains. By including the known limitations of the data in its annual reports and providing information on the intended use of EPA's data, EPA would have better assurance that Congress and the public are informed about the data presented and how the data should be interpreted.

Recommendations for Executive Action

We are making the following three recommendations to EPA:

The Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance should clearly document in guidance to the regional offices how they should use the definition of informal enforcement actions to collect data on these actions.

(Recommendation 1)

The Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance should clearly document in guidance to the regional offices that they should collect data on compliance assistance activities and specify which mechanism to use to maintain the data, such as ICIS. (Recommendation 2)

The Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance should include the known limitations of data in its annual reports and provide information on the intended use of EPA's data. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report to EPA for review and comment. In its written comments, reproduced in appendix I, EPA stated that it agreed with all three of our recommendations and many of our findings and conclusions. EPA also provided technical comments, which we incorporated into the report, as appropriate.

In response to our first recommendation to clearly document in guidance how regional offices should use the definition of informal enforcement to collect data on these actions and specify a mechanism to maintain the data, EPA said that the agency issued a September 30, 2019, memorandum for headquarters and regional enforcement offices to implement. This memorandum provides guidance on EPA definitions for enforcement response tools, to promote consistency and clarity in the use of enforcement terms, according to EPA. EPA also said that the guidance defines "informal enforcement action." The guidance includes instructions on how to report such actions. The guidance states that, with two exceptions, headquarters and regional offices are expected to report, in ICIS, all informal enforcement actions across all programs that meet the

new definition. In addition, the guidance states that because it is only a definitional document and does not include guidance on appropriate use of the enforcement response policy tools, the agency will work to identify the specific changes in practice needed (i.e., changes in use and reporting). The guidance states that EPA anticipates that informal enforcement actions meeting the new definition will be included in the agency's certified annual enforcement results beginning in fiscal year 2020. We view EPA's guidance as a step in the right direction, and the guidance states that EPA will provide training and additional guidance for enforcement staff to ensure consistent implementation across regional offices and headquarters. Additional guidance will provide EPA with an opportunity to specify how regional offices are to use the definition of informal enforcement to collect data on these actions. We modified our recommendation because EPA's recent guidance specifies mechanisms for EPA employees to maintain data on informal enforcement actions.

In response to our second recommendation to clearly document in guidance that regional offices should collect data on compliance assistance activities and specify a mechanism to maintain the data, EPA said that it would collect data on compliance assistance for each of the National Compliance Initiatives and maintain those data in ICIS. In response to our third recommendation to include known data limitations in annual reports and provide information on intended use of its data, EPA stated that it acknowledges the importance of providing information about a dataset to facilitate proper interpretation. For that reason, EPA said that, in time for its fiscal year 2020 report, the agency will create a webpage to describe how best to interpret the data presented in the agency's *Fiscal Year EPA Enforcement and Compliance Annual Results* report and include a reference to that webpage in the report itself as well as the *Year in Review* report.

In technical comments related to our third recommendation, EPA stated that several of the limitations we identified in the report do not affect the data included in its *Fiscal Year EPA Enforcement and Compliance Annual Results* report. In considering EPA's technical comments, we modified the text of the report concerning examples of the annual report's data limitations, as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Administrator of EPA, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.



J. Alfredo Gómez
Director, Natural Resources and Environment

List of Requesters

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
House of Representatives

The Honorable Paul D. Tonko
Chairman
Subcommittee on Environment and Climate Change
Committee on Energy and Commerce
House of Representatives

The Honorable Diana DeGette
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

The Honorable Betty McCollum
Chairman
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
House of Representatives

Appendix I: Comments from the Environmental Protection Agency

Appendix I: Comments from the Environmental Protection Agency



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

JAN 10 2020

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Alfredo Gomez
Director
Natural Resources and Environment
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Gomez:

On behalf of the U.S. Environmental Protection Agency, thank you for the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report, "Additional Action Needed to Improve Data on Informal Enforcement and Compliance Assistance Activities" (GAO-20-95). The purpose of this letter is to provide our response to the recommendations in the draft report and provide technical corrections, where necessary.

The EPA agrees with many of GAO's findings, conclusions, and recommendations. GAO correctly asserts that the EPA Office of Enforcement and Compliance Assurance (OECA) collects a range of information on enforcement and compliance assurance activities. OECA headquarters collects thousands of data elements from the Regions to manage the enforcement and compliance assurance program nationally and our data systems support the wide range of enforcement and compliance assurance activities. Additionally, the Regions collect data to manage their enforcement and compliance assurance programs.

Under authorizations or delegations, states, tribes and territories have the lead to implement and enforce a variety of federal environmental law, including much of the Clean Air Act (CAA), the Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA). The Agency works jointly with its co-regulators to bring facilities back into compliance using the full range of enforcement and compliance assurance tools. The EPA focuses its federal resources on areas where it can make a difference in achieving the Agency-wide goals set forth in the Agency's Strategic Plan, including reducing the number of nonattainment areas, protecting vulnerable populations, reducing the number of impaired waters, and reducing the number of public water systems with health-based violations. The Strategic Plan also has a goal of reducing the average time from violation identification to correction. Managing and leveraging resources for the enforcement and compliance assurance program requires close coordination with our state partners, as well as balancing activities that promptly return facilities to compliance against using those same resources to report data. In recent years, the EPA has become more efficient in its compliance assurance activities by using off-site reviews, such as information from electronic reporting, as well as data analytics. The EPA also is beginning to make its on-site reviews more efficient through use of new tools such as tablets preloaded with regulations and inspection templates.

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Appendix I: Comments from the Environmental Protection Agency

GAO Recommendations:

Recommendation 1. After finalizing the Agency’s definition of informal enforcement actions, clearly document in guidance to the regional offices how they should use the definition to collect data on these actions and specify which mechanism to use to maintain the data, such as ICIS.

EPA/OECA Response:

- OECA agrees with this recommendation. OECA recently issued the “Guidance on EPA Definitions for Enforcement Response Tools” (Sept. 30, 2019) for EPA headquarters and regional enforcement office implementation. The purpose of this Guidance is to promote consistency and clarity in the use of enforcement terms, including “informal enforcement action” across all media. On page 4, Section C of the Guidance, “informal enforcement action” is defined. In addition, the Guidance provides reporting instructions for data entry using EPA data systems.

Recommendation 2. Clearly document in guidance to the regional offices that they should collect data on compliance assistance activities and specify which mechanism to use to maintain the data, such as ICIS.

EPA/OECA Response:

- OECA agrees with this recommendation. As part of the EPA’s National Compliance Initiatives (NCIs), starting in 2020, the EPA will consider the full range of compliance assurance tools and thus will incorporate compliance assistance as an important part of each NCI. Data on compliance assistance efforts that are part of the NCIs will be collected and tracked for management review in the Integrated Compliance Information System (ICIS). In addition, the EPA has collected data in the past on webpage visits related to our national Compliance Assistance Centers and will continue to do so in the future.

Recommendation 3. Include the known limitations of data in its annual reports and provide information on intended use of the EPA’s data.

EPA/OECA Response:

- OECA agrees with this recommendation. We acknowledge the importance of providing information about a dataset to facilitate proper interpretation of the data. For that reason, as the draft GAO report notes on page 4 and page 16, OECA’s Enforcement and Compliance History Online (ECHO) website identifies known limitations of the data, from the various sources it integrates. In addition, as discussed on page 17, OECA’s most recent “Enforcement and Compliance Annual Results” report identifies the data sets and a number of known limitations.

OECA will, in time for the FY 2020 Annual Results report, create a webpage to describe how best to interpret the Annual Results and reference that page in the Annual Results report. That webpage will cross-reference the other webpages, such as the ECHO “Known Data Limitations” page discussed in the draft GAO report, that discuss limitations that affect interpretation of the Annual Results.

Appendix I: Comments from the Environmental Protection Agency

The draft GAO report also discusses the EPA “Year in Review” report, which is a product of the EPA Office of Public Affairs. The Office of Public Affairs has agreed to include a note in the enforcement section of the FY 2020 Year in Review report directing readers to OECA’s webpage related to interpretation of its Enforcement and Compliance Annual Results report.

- Technical corrections related to Recommendation 3:
 - Page 16, last sentence of 1st paragraph: The draft GAO report says that “data on penalties under the Clean Water Act prior to 2015” are “not appropriate for identifying trends,” based on a statement on the ECHO website. That statement is on ECHO because the EPA lacks comprehensive data on penalties assessed by authorized states prior to 2015. Data on EPA CWA enforcement actions are sufficiently reliable to evaluate trends back to at least 2004, when the EPA established a formal data certification process requiring EPA enforcement programs to certify that its data on enforcement activities is complete and accurate. (Thus, the limitation noted on the ECHO webpage does not affect Enforcement and Compliance Annual Results report, which presents trends only for EPA enforcement activities, not those of authorized states.)
 - Page 18, 1st (incomplete) sentence: The draft GAO report quotes the ECHO website to say that the EPA “may not have complete or accurate data on the entire universe of regulated entities” for CWA or RCRA. This statement is important for ECHO products and data analyses that compare compliance and enforcement activity to the universe of regulated facilities. This limitation does not affect EPA’s FY 2018 Enforcement and Compliance Annual Results report, which relies on a certified set of EPA enforcement activity data and does not attempt a comparison to the universe of facilities.
 - Page 18, 3rd sentence: The draft GAO report asserts that the FY 2018 Enforcement and Compliance Annual Results report “does not include information about all of the data in the report.” If this sentence is referencing the two previous examples above, then, for the reasons explained, we respectfully disagree that these are relevant limitations affecting the Annual Results that need to be discussed on our proposed webpage. If GAO believes there are other specific caveats that affect the Annual Results report, OECA would appreciate GAO bringing them to attention so that we can address them in the Agency’s response to Recommendation 3.

General Comments:

EPA/OECA Response:

- Technical corrections related to the rest of draft GAO report:
 - Throughout the draft GAO report there are references to the lack of informal enforcement definitions or guidance. Now that the “Guidance on EPA Definitions for Enforcement Response Tools” (Sept. 30, 2019) has been finalized, OECA suggests that those parts of the draft report be updated.
 - Given the draft report is focused specifically on examining data on “EPA” informal enforcement actions and compliance assistance activities, the title and the body of the report should make the focus on EPA activities clear. For example, the title should be:

Appendix I: Comments from the Environmental Protection Agency

“Additional Action Needed to Improve Data on EPA Informal Enforcement and Compliance Assistance Activities.”

- On the inside cover page of draft GAO report, under “What GAO Found,” there is a reference to “a 2018 memorandum” from OECA about increasing compliance assistance activities. OECA suggests that GAO provide the title and date of this memo in the report—“Transition from National Enforcement Initiatives to National Compliance Initiatives” (Aug. 21, 2018). The memo can be found at: <https://www.epa.gov/sites/production/files/2018-08/documents/transitionfromneitonci082118.pdf>.
- Page 1, bottom of page: Change to, “OECA provides overall direction to the Agency’s regional offices and authorized states on . . .”
- Page 2, second full sentence: Change to “. . . notices of violation and developing administrative, civil judicial, and criminal cases . . . and overseeing enforcement programs of authorized states, where applicable.”
- Page 2, second paragraph: “. . . and working more closely with states in planning a range of compliance and enforcement efforts to increase . . .”
- Page 2, footnote 5: “. . . authorized states handle . . .”
- Page 2, footnote 8: “. . . those states which have applied for and been approved by EPA to implement a federal regulatory program or implement a state regulatory program in lieu of the federal program. For example, all but three states are authorized to implement state permitting programs in lieu of the National Pollutant Discharge Elimination System (NPDES) permit program under Section 402 of the Clean Water Act (CWA).”
- Page 7, first paragraph: “. . . that describe the Agency’s range of recommended responses to noncompliance based on a number of factors including the magnitude, frequency, and impact of an instances of noncompliance, and the escalation of the Agency’s enforcement response to continuing noncompliance.”

Overall, the EPA agrees with all three of GAO’s recommendations and has plans to implement them. If you have any questions, please contact Loan Nguyen at Nguyen.Loan@epa.gov or 202-564-4041.

Sincerely,


Susan Parker Bodine

cc: Larry Starfield, OECA
David Hindin, OECA/OC
Rosemarie A. Kelley, OECA/OCE
Karin Koslow, OECA/OCE
John Dombrowski, OECA/OC
Mark Badalamente, OECA/OAP

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

J. Alfredo Gómez at (202) 512-3841 or gomezj@gao.gov

Staff Acknowledgments

In addition to the contact named above, Chad M. Gorman (Assistant Director); Tahra Nichols (Analyst in Charge); Mark Braza; Courtney Carroux; Tara Congdon; Jazzmin Cooper; Matthew Hunter; Caroline Prado; Dan Royer; Jeanette Soares; Kiki Theodoropoulos, Sonya Vartivarian, and Michelle R. Wong made key contributions to this report.

Appendix III: Accessible Data

Agency Comment Letter

Appendix I: Comments from the Environmental Protection Agency

Page 1

JAN 10 2020

Mr. Alfredo Gomez

Director

Natural Resources and Environment

U.S. Government Accountability Office

Washington, D.C. 20548

Dear Mr. Gomez:

ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

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The EPA agrees with many of GAO's findings, conclusions, and recommendations. GAO correctly asserts that the EPA Office of Enforcement and Compliance Assurance (OECA) collects a range of information on enforcement and compliance assurance activities. OECA headquarters collects thousands of data elements from the Regions to manage the enforcement and compliance assurance program nationally

and our data systems support the wide range of enforcement and compliance assurance activities. Additionally, the Regions collect data to manage their enforcement and compliance assurance programs.

Under authorizations or delegations, states, tribes and territories have the lead to implement and enforce a variety of federal environmental law, including much of the Clean Air Act (CAA), the Clean Water Act (CWA), and the Resource Conservation and Recovery Act (RCRA). The Agency works jointly with its co-regulators to bring facilities back into compliance using the full range of enforcement and compliance assurance tools. The EPA focuses its federal resources on areas where it can make a difference in achieving the Agency-wide goals set forth in the Agency's Strategic Plan, including reducing the number of nonattainment areas, protecting vulnerable populations, reducing the number of impaired waters, and reducing the number of public water systems with health-based violations. The Strategic Plan also has a goal of reducing the average time from violation identification to correction. Managing and leveraging resources for the enforcement and compliance assurance program requires close coordination with our state partners, as well as balancing activities that promptly return facilities to compliance against using those same resources to report data. In recent years, the EPA has become more efficient in its compliance assurance activities by using off-site reviews, such as information from electronic reporting, as well as data analytics. The EPA also is beginning to make its on-site reviews more efficient through use of new tools such as tablets preloaded with regulations and inspection templates.

Page 2

GAO Recommendations:

Recommendation 1. After finalizing the Agency's definition of informal enforcement actions, clearly document in guidance to the regional offices how they should use the definition to collect data on these actions and specify which mechanism to use to maintain the data, such as ICIS.

EPA/OECA Response:

- OECA agrees with this recommendation. OECA recently issued the "Guidance on EPA Definitions for Enforcement Response Tools" (Sept. 30, 2019) for EPA headquarters and regional enforcement office implementation. The purpose of this Guidance is to promote consistency and clarity in the use of enforcement

terms, including "informal enforcement action" across all media. On page 4, Section C of the Guidance, "informal enforcement action" is defined. In addition, the Guidance provides reporting instructions for data entry using EPA data systems.

Recommendation 2. Clearly document in guidance to the regional offices that they should collect data on compliance assistance activities and specify which mechanism to use to maintain the data, such as ICIS.

EPA/OECA Response:

- OECA agrees with this recommendation. As part of the EPA's National Compliance Initiatives (NCIs), starting in 2020, the EPA will consider the full range of compliance assurance tools and thus will incorporate compliance assistance as an important part of each NCI. Data on compliance assistance efforts that are part of the NCIs will be collected and tracked for management review in the Integrated Compliance Information System (ICIS). In addition, the EPA has collected data in the past on webpage visits related to our national Compliance Assistance Centers and will continue to do so in the future.

Recommendation 3. Include the known limitations of data in its annual reports and provide information on intended use of the EPA's data.

EPA/OECA Response:

- OECA agrees with this recommendation. We acknowledge the importance of providing information about a dataset to facilitate proper interpretation of the data. For that reason, as the draft GAO report notes on page 4 and page 16, OECA's Enforcement and Compliance History Online (ECHO) website identifies known limitations of the data, from the various sources it integrates. In addition, as discussed on page 17, OECA's most recent "Enforcement and Compliance Annual Results" report identifies the data sets and a number of known limitations.

OECA will, in time for the FY 2020 Annual Results report, create a webpage to describe how best to interpret the Annual Results and reference that page in the Annual Results report. That webpage will cross-reference the other webpages, such as the ECHO "Known Data Limitations" page discussed in the draft GAO report, that discuss limitations that affect interpretation of the Annual Results.

Page 3

The draft GAO report also discusses the EPA "Year in Review" report, which is a product of the EPA Office of Public Affairs. The Office of Public Affairs has agreed to include a note in the enforcement section of the FY 2020 Year in Review report directing readers to OECA's webpage related to interpretation of its Enforcement and Compliance Annual Results report.

- Technical corrections related to Recommendation 3:
 - Page 16, last sentence of 1st paragraph: The draft GAO report says that "data on penalties under the Clean Water Act prior to 2015" are "not appropriate for identifying trends," based on a statement on the ECHO website. That statement is on ECHO because the EPA lacks comprehensive data on penalties assessed by authorized states prior to 2015. Data on EPA CWA enforcement actions are sufficiently reliable to evaluate trends back to at least 2004, when the EPA established a formal data certification process requiring EPA enforcement programs to certify that its data on enforcement activities is complete and accurate. (Thus, the limitation noted on the ECHO webpage does not affect Enforcement and Compliance Annual Results report, which presents trends only for EPA enforcement activities, not those of authorized states.)
 - Page 18, 1st (incomplete) sentence: The draft GAO report quotes the ECHO website to say that the EPA "may not have complete or accurate data on the entire universe of regulated entities" for CWA or RCRA. This statement is important for ECHO products and data analyses that compare compliance and enforcement activity to the universe of regulated facilities. This limitation does not affect EPA's FY 2018 Enforcement and Compliance Annual Results report, which relies on a certified set of EPA enforcement activity data and does not attempt a comparison to the universe of facilities.
 - Page 18, 3rd sentence: The draft GAO report asserts that the FY 2018 Enforcement and Compliance Annual Results report "does not include information about all of the data in the report." If this sentence is referencing the two previous examples above, then, for the reasons explained, we respectfully disagree that these are relevant limitations

affecting the Annual Results that need to be discussed on our proposed webpage. If GAO believes there are other specific caveats that affect the Annual Results report, OECA would appreciate GAO bringing them to attention so that we can address them in the Agency's response to Recommendation 3.

General Comments:

EPA/OECA Response:

- Technical corrections related to the rest of draft GAO report:
 - Throughout the draft GAO report there are references to the lack of informal enforcement definitions or guidance. Now that the "Guidance on EPA Definitions for Enforcement Response Tools" (Sept. 30, 2019) has been finalized, OECA suggests that those parts of the draft report be updated.
 - Given the draft report is focused specifically on examining data on "EPA" informal enforcement actions and compliance assistance activities, the title and the body of the report should make the focus on EPA activities clear. For example , the title should be:

Page 4

- "Additional Action Needed to Improve Data on EPA Informal Enforcement and Compliance Assistance Activities."
- On the inside cover page of draft GAO report, under "What GAO Found," there is a reference to "a 2018 memorandum" from OECA about increasing compliance assistance activities. OECA suggests that GAO provide the title and date of this memo in the report-"Transition from National Enforcement Initiatives to National Compliance Initiatives" (Aug. 21, 2018). The memo can be found at:
<https://www.epa.gov/sites/production/files/2018-08/documents/transitionfromneitonci082118.pdf>.
- Page 1, bottom of page: Change to, "OECA provides overall direction to the Agency's regional offices and authorized states on ..."

- Page 2, second full sentence: Change to "... notices of violation and developing administrative, civil judicial, and criminal cases ... and overseeing enforcement programs of authorized states, where applicable."
- Page 2, second paragraph: "... and working more closely with states in planning a range of compliance and enforcement efforts to increase ..."
- Page 2, footnote 5: "... authorized states handle ..."
- Page 2, footnote 8: "... those states which have applied for and been approved by EPA to implement a federal regulatory program or implement a state regulatory program in lieu of the federal program. For example, all but three states are authorized to implement state permitting programs in lieu of the National Pollutant Discharge Elimination System (NPDES) permit program under Section 402 of the Clean Water Act (CWA)."
- Page 7, first paragraph: "... that describe the Agency's range of recommended responses to noncompliance based on a number of factors including the magnitude, frequency, and impact of an instances of noncompliance, and the escalation of the Agency's enforcement response to continuing noncompliance."

Overall, the EPA agrees with all three of GAO's recommendations and has plans to implement them. If you have any questions, please contact Loan Nguyen at Nguyen.Loan@epa.gov or 202-564-4041.

Sincerely,

Susan Parker Bodine

cc: Larry Starfield, OECA

David Hindin, OECA/OC

Rosemarie A. Kelley, OECA/OCE

Karin Koslow, OECA/OCE

Appendix III: Accessible Data

John Dombrowski, OECA/OC

Mark Badalamente, OECA/OAP

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