



**EVALUATION OF OSHA'S
ERA and EPA WHISTLEBLOWER
INVESTIGATIONS**

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

REPORT NO.: 2E-10-105-0001
DATE ISSUED: March 16, 2001

TABLE OF CONTENTS

- ACRONYMS AND GLOSSARY OF TERMS ii**
- EXECUTIVE SUMMARY iii**
- BACKGROUND 1**
- PURPOSE AND METHODOLOGY 2**
- FINDINGS AND RECOMMENDATIONS 3**
 - A. OSHA IS NOT COMPLETING ERA OR EPA WHISTLEBLOWER INVESTIGATIONS WITHIN THE STATUTORY PERIOD OF 30 DAYS 3**
 - 1. Analysis of Investigation Time 3**
 - 2. Factors Contributing to Length of Investigations 4**
 - a. Attorney involvement 4**
 - b. Evidence Collection 5**
 - c. Complexity of Investigations 5**
 - 3. Conclusion and Recommendations 5**
 - B. POLICIES AND PROCEDURES VARY AMONG INVESTIGATORS 7**
 - 1. Extension Practices 7**
 - 2. Thirty-Day Time Frame 8**
 - 3. Case Monitoring/Oversight 8**
 - 4. Investigator’s Manual 8**
- Recommendations 8**

- APPENDIX**
- Agency Response 10**

ACRONYMS AND GLOSSARY OF TERMS

ACRONYMS

DOL	-	U.S. Department of Labor
EPA	-	Environmental Protection Agency
ERA	-	Energy Reorganization Act
NRC	-	Nuclear Regulatory Commission
OSHA	-	Occupational Safety and Health Administration
STAA	-	Surface Transportation Assistance Act
WH	-	Wage and Hour

GLOSSARY

Whistleblower	–	an employee who reports a safety or health violation.
11(c)	–	that section of the Occupational Safety and Health Act that provides for investigations of whistleblower complaints.

EXECUTIVE SUMMARY

We evaluated whether the Occupational Safety and Health Administration (OSHA) is conducting whistleblower investigations under the Energy Reorganization Act (ERA) and six Environmental Protection Agency (EPA) Acts within the statutory 30-day time frame and why OSHA is or is not meeting the 30-day deadline.

OSHA's mission is to save lives, prevent injuries and protect the health of America's workers through the enforcement of the Occupational Safety and Health (OSH) Act. Part of carrying out this mission includes investigating allegations of discrimination against whistleblowers -- employees who report safety and health violations. In 1997, OSHA was given responsibility for investigating whistleblower complaints under the ERA and EPA Acts. All seven statutes require that the initial investigation be completed within 30 days.

RESULTS OF EVALUATION

OSHA is not completing ERA/EPA whistleblower investigations within 30 days. We identified several ways OSHA can shorten the amount of time investigations currently take. We also identified two areas where policies and procedures vary among investigators. OSHA's implementation of our recommendations should result in shorter whistleblower investigations and uniform handling of whistleblower complaints.

FINDING A - OSHA Is Not Completing ERA or EPA Whistleblower Investigations Within the Statutory Period of 30 Days.

Based on OSHA's data and interviews with investigators, OSHA is not completing ERA/EPA whistleblower complaints within 30 days. On average, investigators took 81 days to complete an ERA investigation and 101 days to complete EPA investigations. Investigators cited several reasons why they were unable to meet the 30 day deadline, such as delays caused by attorneys, difficulty collecting evidence, and the complex and technical nature of the cases.

We believe OSHA can implement changes that will reduce the average amount of time these investigations are currently taking. Based on our interviews with OSHA officials, investigators do not currently prioritize ERA or EPA cases, as required by the regulation, because they do not believe one whistleblower should be given priority over another simply due to statutory concerns. Unless the regulation is changed, OSHA needs to follow the regulation as written and instruct investigators to prioritize ERA and EPA cases. Although OSHA has stated that they intend to take measures to enhance their investigator legal training, OSHA needs to implement these measures and provide investigators with training specific to the highly technical issues unique to ERA and EPA cases, and incorporate such training into its formal training program.

We believe that if OSHA implements our recommendations the average amount of time these investigations are currently taking will be greatly reduced. However, if OSHA still fails to meet the 30-day time frame, legislative changes supported by both the Department of Labor and Nuclear Regulatory Commission that would allow more time to complete ERA investigations, and similarly for EPA investigations, should continue to be pursued.

FINDING B - Policies and Procedures Vary Among Investigators.

Our interviews with investigators found variations in policies and procedures involving extensions and calculation of the 30-day time frame.

Extension Practices

OSHA officials stated that there is not a formal process for requesting an extension. However, our interviews of 41 investigators found that they are using various informal extension practices. OSHA management stated that investigators should be cognizant of the 30-day time frame (as required by the regulation) while completing a thorough investigation. Since this is OSHA's policy, it should be clearly communicated to the field in order to eliminate the confusion surrounding current extension practices by investigators.

Thirty-Day Time Frame

Our interviews found that investigators are using different dates or activities to calculate the 30-day time frame for ERA/EPA cases. OSHA needs to develop and implement a formal policy on how investigators are to calculate the 30 days.

Case Monitoring/Oversight

OSHA management needs to place more emphasis on case monitoring and oversight. OSHA needs to develop guidelines and goals for supervisors responsible for ERA and EPA whistleblower cases. These goals should be incorporated into individual performance standards, as well as agency performance measures.

Investigator's Manual

Part of the confusion/inconsistency surrounding both extension practices and the 30-day period results from the fact that the current Investigator's Manual does not contain information on the ERA and EPA statutes. OSHA needs to finalize and distribute the updated version as soon as possible. The new manual should eliminate the confusion surrounding current extension practices by investigators, as well as provide clear instructions for calculating the 30 days, and increased case monitoring/oversight by supervisors.

RECOMMENDATIONS

1. (a) OSHA should instruct investigators to prioritize whistleblower investigations as required by the regulation.

(b) OSHA should provide investigators with training that addresses both the legal and highly

technical issues unique to ERA and EPA investigations, and incorporate such training enhancements into its formal investigator training program.

2. (a) OSHA should eliminate the confusion surrounding informal extension practices by investigators.
- (b) OSHA should clarify the specific start and end dates for investigators to consistently calculate the thirty-day time frame for each case.
- (c) OSHA should develop monitoring/oversight guidelines and goals for supervisors responsible for ERA and EPA whistleblower cases, and include such goals in individual performance standards and agency performance measures.
- (d) OSHA should issue a revised/updated Investigator's Manual incorporating, as appropriate, OIG recommendations contained in this report.

AGENCY RESPONSE AND OIG CONCLUSIONS

In response to OIG's official draft report, OSHA agreed with our findings and recommendations. As a result of corrective actions planned or already taken, all recommendations are resolved. Further, recommendations 1.(a), 2.(a) and 2.(b) are considered closed. The remaining recommendations will be closed pending OIG's receipt of appropriate documentation specified in the report. The agency's complete response is found in the Appendix.

BACKGROUND

The mission of the Occupational Safety and Health Administration (OSHA) is to save lives, prevent injuries and protect the health of America's workers through the enforcement of the Occupational Safety and Health (OSH) Act. Part of carrying out this mission includes investigating allegations of discrimination against whistleblowers -- employees who report OSH Act violations. Over the years Congress has expanded OSHA's whistleblower jurisdiction to include twelve federal statutes.¹ Our evaluation concerned seven of the twelve statutes.

In 1997, the Secretary of Labor transferred responsibility for initial investigations under seven statutes from the Wage and Hour Division of the Employment Standards Administration (ESA) to OSHA. The seven statutes included the Energy Reorganization Act (ERA), as well as the following Environmental Protection Agency (EPA) statutes: the Clean Air Act; the Comprehensive Environmental Response, Compensation and Liability Act; the Federal Water Pollution Control Act; the Safe Drinking Water Act; the Solid Waste Disposal Act; and the Toxic Substances Control Act. The Secretary transferred responsibility to OSHA because unlike ESA's Wage and Hour Division, OSHA had staff with experience investigating allegations of discrimination against employees who raise health and safety concerns.

OSHA's Office of 11(c) Programs conducts the initial investigations. Investigations include interviewing the complainant and appropriate witnesses, notifying the respondent, collecting evidence and reviewing the respondent's answers. Investigators are encouraged to conduct interviews in person when possible. If both parties are interested, the investigator tries to facilitate a settlement. When the investigation is completed, the investigator drafts a detailed report stating the determination, and presenting the evidence and the investigator's conclusions. In FY 1999, OSHA received a total of 1,821 cases of which 125 (6.9%) were ERA or EPA cases. At the end of FY 1999, OSHA had 62 investigators on board, averaging approximately 30 investigations per investigator per year.

¹ The twelve statutes include the Occupational Safety and Health Act, the Surface Transportation Assistance Act, the Asbestos Emergency Response Act, the International Safe Container Act, the Energy Reorganization Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, the Toxic Substances Control Act and the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

PURPOSE AND METHODOLOGY

PURPOSE

This evaluation focused on whether OSHA is conducting ERA/EPA whistleblower investigations within the 30-day time frame and why they are or are not meeting the 30-day deadline. Our specific evaluation questions were

- 1) Is OSHA completing whistleblower investigations within 30 days as required by federal statutes?
- 2) What factors affect investigators meeting the 30-day deadline?

METHODOLOGY

Qualitative Methods

As part of our evaluation, we interviewed a total of 49 Regional Investigators and Regional Investigator's supervisors (investigators). Additionally, we interviewed officials from OSHA's Office of 11(c) Programs, as well as from both the Employment Standards Administration's Wage and Hour Division (WH), and the Nuclear Regulatory Commission(NRC).

We also conducted a telephone customer satisfaction survey of whistleblowers. Regrettably, the number of completed interviews was too low to provide reliable/generalizable information for this evaluation.

Document Review

In addition to interviews, we reviewed numerous documents including OSHA's Discrimination Investigations Data Reports, relevant General Accounting Office and Inspector General reports, controlling legislation and regulations, as well as OSHA's Whistleblower Investigation manuals and case files.

We conducted our review in accordance with the *Quality Standards for Inspections* published by the President's Council on Integrity and Efficiency.

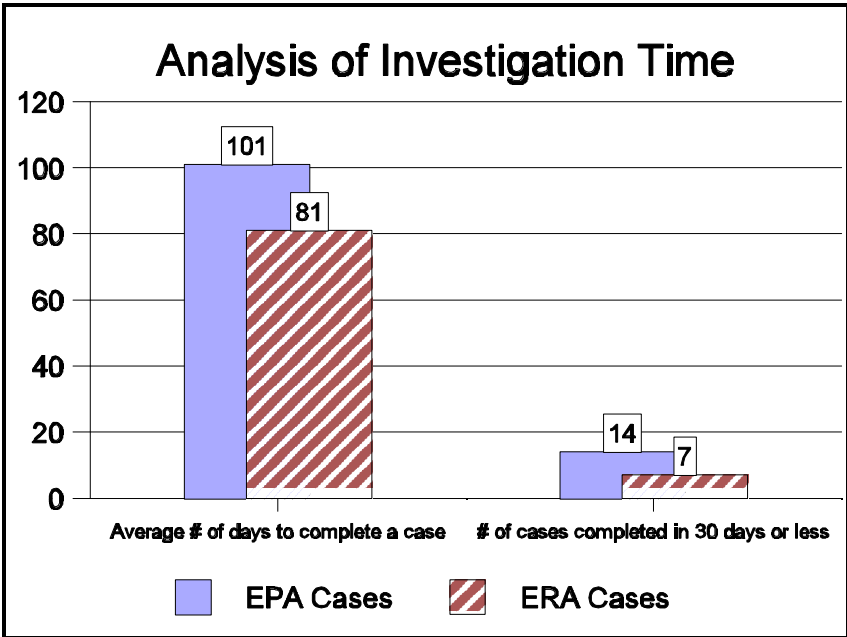
FINDINGS AND RECOMMENDATIONS

FINDING A - OSHA IS NOT COMPLETING ERA OR EPA WHISTLEBLOWER INVESTIGATIONS WITHIN THE STATUTORY PERIOD OF 30 DAYS

The Energy Reorganization Act (ERA), as well as the following Environmental Protection Agency (EPA) statutes: the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act; the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, and the Toxic Substances Control Act, all require that whistleblower investigations be completed within 30 days. Congress enacted the 30 day time frame to expedite the handling of complaints by employees of discriminatory action by employers. Currently, OSHA is not meeting this statutory standard.

1. Analysis of Investigation Time

In FY 1999, OSHA received 125 ERA and EPA cases. The OSHA Discrimination Investigations Data Report for FY-99 shows that OSHA received 61 ERA cases and 64 EPA cases. OSHA completed 46 ERA and 66 EPA cases in FY-99. Of the 46 ERA cases OSHA completed, 15% (7 cases) were completed in 30 days or less. Of the 66 EPA cases completed, 21% (14 cases) were completed in 30 days or less. On average, investigators took 81 days to complete an ERA investigation and 101 days to complete EPA investigations.



Of the 41 investigators that we interviewed, only 8 (20%) stated that they completed a majority of their cases in 30 days. A total of 40 investigators stated that the 30-day time frame is unrealistic. Most investigators (23 out of 41) believed that 90 days was a more realistic time frame, with 11 preferring 60 days. [OSH Act 11(c) cases, which make up 77% of the investigators' workload, have a 90-day time frame.] Only 2 investigators believed that 30 days was a realistic time frame and that was if the investigation was cursory and focused mainly on data collection rather than an accurate finding. The remaining five investigators had varied opinions, which differed from the above.

In addition to OSHA officials and investigators, we spoke with the Employment Standards Administration's Wage and Hour Division (WH) and the Nuclear Regulatory Commission (NRC). WH was responsible for ERA and EPA whistleblower investigations prior to 1997 when responsibility was transferred to OSHA. The NRC tracks OSHA's ERA investigations and can use OSHA's findings of discrimination to fine licensees. Both agencies agreed that 30 days is not enough time to complete a thorough investigation. WH stated that even if they had assigned more manpower and resources to the investigations, they could not have met the 30-day time frame. NRC takes an average of 5 months to complete similar investigations. (Note: We did not independently evaluate the WH and the NRC's handling of Whistleblower or similar investigations.) It should also be noted that the NRC and DOL have jointly proposed legislation to extend the time allowed for ERA investigations to 90 days.

While the NRC, WH and OSHA investigators hold the opinion that 30 days is not an adequate amount of time, we were unable to find objective data to support this position. Our review of case files disclosed that files do not consistently contain written information on extensions or why the investigation took over 30 days. In order to make a recommendation about the time frame for ERA/EPA investigations, we would need to review the specifics as to why investigators are extending cases and the length of the extensions.

2. Factors Contributing to Length of Investigations

The investigators who conducted ERA and/or EPA investigations cited several reasons why most investigations were not completed within the 30-day time frame required by statute.

- a. Fifteen out of forty-one investigators (37%) stated that attorney involvement had the greatest impact on whether they met the 30-day time frame.**

Attorneys often require the investigator to go through them to set up interviews with their client and insist on attending the interview, thus creating scheduling conflicts. The regulation envisions the respondent preparing a response to the allegation within 5 days. Attorneys usually take longer to respond. Investigators, who lack formal legal training, also cited difficulties dealing with legal issues raised by attorneys, such as objections to questions during the interview process and discussion of complex legal issues. OSHA understands that both parties are

legally permitted to obtain legal representation and they strive to ensure that the process is timely and fair whether a party is represented or not.

- b. Thirteen out of forty-one investigators (32%) stated that difficulty in collecting evidence had the greatest impact on whether they met the 30-day time frame.** Investigators work independently and their time, among other resources, is limited. ERA and EPA cases require that the complainant be interviewed and the respondent notified in person. OSHA has 63 investigators to cover twelve different statutes. ERA and EPA cases may involve numerous witnesses, and several different complaints and complainants. Investigating a single case may also require extensive travel.

- c. Five out of forty-one investigators (12%) stated that the complexity of the investigations hinder their ability to issue findings within 30 days.** Investigators stated that ERA and EPA cases are more complex than other investigations they conduct. Complainants are usually well educated, such as engineers, and the issues are highly technical. ERA and EPA cases generally involve larger settlement amounts than the 11(c) or Surface Transportation Assistance Act (STAA) cases they investigate. If an investigator is not trained in that scientific field or has little or no experience investigating similar claims, the investigator will need time to gain a working knowledge of the issues.

3. Conclusion and Recommendations

We believe OSHA can implement changes that will reduce the average amount of time these investigations are currently taking. The regulation specifically states in 29 CFR §24.4(b), “The Assistant Secretary shall, on a priority basis, investigate and gather data concerning such [ERA or EPA] case...” Based on our interviews with OSHA officials, investigators do not currently prioritize ERA or EPA cases because they do not believe one whistleblower should be given priority over another simply due to statutory concerns. However, unless the regulation is changed, OSHA needs to follow the regulation as written and instruct investigators that ERA and EPA cases are to be made a priority.

OSHA also needs to improve their investigator training. OSHA officials told us that in response to a 1997 OIG audit of 11(c) whistleblower investigations, OSHA intends to take measures to enhance their investigator training. These changes will include training on how to conduct legal research on the web, access to Westlaw, etc. While this new legal training should decrease the amount of time investigators take to complete investigations, investigators also need training on issues unique to ERA and EPA cases. Many investigators stated that the ERA and EPA statutes, as well as the cases themselves, are very complex and deal with highly technical issues. For example, when investigating an ERA case, an investigator may deal with attorneys who are not only well versed in the law, but also in the nuclear energy production environment. Therefore, investigators need a working understanding of nuclear engineering terms and the operation of a nuclear power plant.

OSHA should provide investigators with a basic understanding of the technical issues involved in these types of cases so that investigators can spend more time collecting evidence and less time understanding the law and technical issues.

We believe that if OSHA implements our recommendations the average amount of time these investigations are currently taking will be greatly reduced. However, if OSHA still fails to meet the 30-day time frame, legislative changes that would allow more time to complete ERA investigations, and similarly for EPA investigations, should continue to be pursued.

Recommendation #1:

We recommend that:

(a) OSHA instruct investigators to prioritize whistleblower investigations as required by the regulation.

(b) OSHA provide investigators with training that addresses both the legal and highly technical issues unique to ERA and EPA investigations, and incorporate such training enhancements into its formal investigator training program.

OSHA's Response

1.(a) *“Instruction to the field regarding this issue has already been given (see attached memorandum). In addition, we will continue to emphasize that priority must be given to ERA and EPA investigations during conference calls, at training courses, in the next change to the Investigator Manual, and by use of performance goals as noted in recommendation 2.(c) below. Followup will be accomplished by means of case file and on-site audits.”*

1.(b) *“A specialized course to cover ERA and EPA investigations is currently under development. In addition, we will be conferring with the EPA, NRC, and DOE to invite representatives from those agencies to speak at OSHA training sessions and conferences and to explore the possibility of OSHA investigators attending appropriate training conducted by those agencies.*

OIG's Conclusion

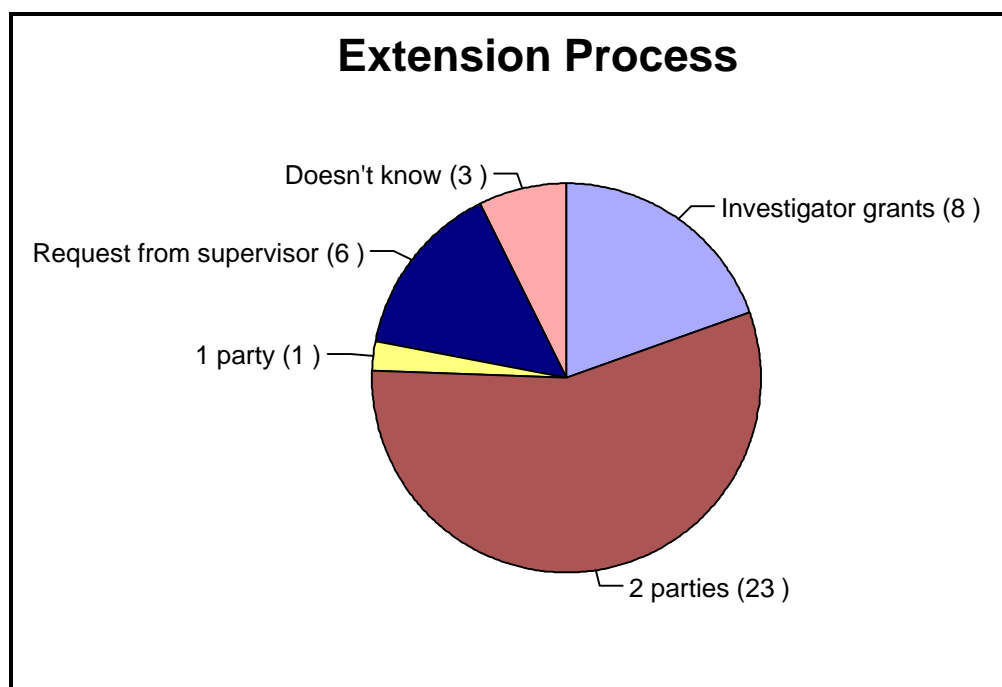
We concur with the proposed corrective actions and consider Recommendation #1 resolved. After reviewing OSHA's March 6, 2001 memorandum to Regional Administrators, we consider Recommendation 1.(a) closed. Recommendation 1.(b) will be closed when we receive additional information concerning the specialized course and a start date.

FINDING B - POLICIES AND PROCEDURES VARY AMONG INVESTIGATORS

Unless Congress changes the existing legislation, the statutes require that investigations be completed in 30 days and investigators should make a substantial effort to complete the review in that period of time. If an investigator needs additional time to complete an investigation, OSHA's practices allow the investigator to extend the 30-day period. Our interviews with investigators found variations in policies and procedures involving extensions and calculation of the 30-day time frame.

1. Extension Practices

OSHA officials stated that there is not a formal process for requesting an extension. However, our interviews of 41 investigators found that they are using various informal extension practices. Twenty-three stated that an investigator could only extend if both parties agreed to the extension. Eight stated that an investigator could extend an investigation at his own discretion. Six stated that an investigator must request an extension from his supervisor. Three were unclear about the current policy, and one stated that only one party must agree to an extension. OSHA management stated that investigators should be cognizant of the 30-day time frame (as required by the regulation) while completing a thorough investigation. Since this is OSHA's policy, it should be clearly communicated to the field in order to eliminate the confusion surrounding current extension practices by investigators.



2. Thirty-Day Time Frame

Our interviews found that investigators are using different dates or activities to calculate the 30-day time frame for ERA/EPA cases. Twenty-eight (68%) of the investigators we interviewed stated that the 30 days allotted for the investigation began when they were assigned the case. Thirteen (32%) believed the clock began when the complaint was received by OSHA or the Department of Labor. With regard to when the clock stopped, twenty-one investigators (51%) stated that a case was closed when an investigator reached a final determination. Nineteen (46%) stated a case closed when the parties were mailed the determination letter and one believed the closing conference closed the case. OSHA needs to clarify for investigators how to calculate the 30 days.

3. Case Monitoring/Oversight

OSHA management needs to place more emphasis on case monitoring and oversight. OSHA needs to develop guidelines and goals for supervisors responsible for ERA and EPA whistleblower cases. OSHA's data tracking system allows a supervisor to readily see how many cases an investigator has and how long each case has been open. Increased monitoring by supervisory personnel should further contribute to lowering the average number of days it takes to complete an ERA or EPA whistleblower investigation. These goals should be incorporated into individual performance standards, as well as agency performance measures.

4. Investigator's Manual

Part of the confusion/inconsistency surrounding both extension practices and the 30-day period results from the fact that the current Investigator's Manual does not contain information on the ERA and EPA statutes. The current manual only covers four of the twelve statutes for which the investigators are responsible. OSHA is in the process of finalizing an updated version and investigators are currently reviewing a draft. OSHA needs to finalize and distribute the updated version as soon as possible. The new manual should eliminate the confusion surrounding current extension practices by investigators, as well as provide clear instructions for calculating the 30 days, and increased case monitoring/oversight by supervisors.

RECOMMENDATION #2:

We recommend that:

- (a) OSHA eliminate confusion surrounding informal extension practices by investigators.**
- (b) OSHA clarify the specific start and end dates for investigators to consistently calculate the thirty-day time frame for each case.**
- (c) OSHA develop monitoring/oversight guidelines and goals for supervisors responsible for ERA and EPA whistleblower cases, and include such goals in individual performance standards and agency performance measures.**
- (d) OSHA issue a revised/updated Investigator's Manual incorporating, as appropriate, OIG recommendations contained in this report.**

OSHA's Response

- 2.(a) *“As noted above, we have provided instruction to the field regarding this recommendation. Further emphasis will be given at training courses, conferences, conference calls, and in the Investigator Manual with followup through case file and on-site audit.”*
- 2.(b) *“Again, as noted about, direction has already been provided as described in the attached memorandum. Further emphasis will be given at training courses, conferences, conference calls, and in the Investigator Manual with followup through case file and on-site audits.”*
- 2.(c) *“In June 1998 the Assistant Secretary approved recommendations of the Whistleblower Taskforce to adopt seven specific performance measures to gauge the success of the program. One of the seven measures assesses timeliness in terms of the average number of days to complete an investigation. This measure will be used to monitor the relative priority given to EPA and ERA cases; field managers and supervisors will be held accountable accordingly. We expect this system to be in place no later than April 2001.”*
- 2.(d) *“As noted in the OIG report, OSHA is in the process of completing an updated version of the Investigator's Manual. With the recent appointment of a new Director of the Office of Investigative Assistance, we expect some additional delay will occur, not only to incorporate the current OIG recommendations, but to allow the new Director time to consider any additional modifications. We expect the manual to be issued not later than April 2001.”*

OIG's Conclusion

We concur with the proposed corrective actions and consider Recommendation #2 resolved. After reviewing OSHA's March 6, 2001 memorandum to Regional Administrators, we consider Recommendations 2.(a) and 2.(b) closed. Recommendation 2.(c) will be closed when we receive written notification that the performance measure assessing timeliness is put into place, and 2.(d) will be closed when we receive written notification that the new Investigator's Manual has been issued.

APPENDIX
Agency Response

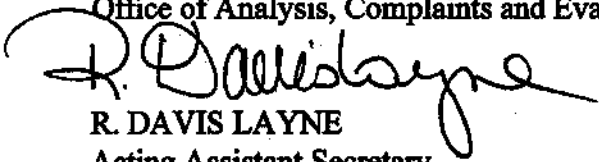
U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



MAR - 7 2001

MEMORANDUM FOR: **JOSE M. RALLS**
Assistant Inspector General
Office of Analysis, Complaints and Evaluations

FROM: 
R. DAVIS LAYNE
Acting Assistant Secretary

SUBJECT: Evaluation of the Occupational Safety and Health Administration's
ERA/EPA Whistleblower Investigations,
Report No. 2E-10-105-0001

This memorandum is provided in response to the subject evaluation report. I sincerely appreciate the time and effort you and your staff have put into this evaluation. We feel that your review was thorough and fair, and the report accurately reflects the status of our ERA/EPA investigations experience.

Your report comes to us at an opportune time in that we have a new Director of the Office of Investigative Assistance. Further staff level contact regarding this matter should be directed to Mr. John Spear at 693-2187.

Our response and corrective actions plans for each of the recommendations are as follows:

- 1. (a) OSHA instruct investigators to prioritize whistleblower investigations as required by the regulation.**

Instruction to the field regarding this issue has already been given (see attached memorandum). In addition, we will continue to emphasize that priority must be given to ERA and EPA investigations during conference calls, at training courses, in the next change to the Investigator Manual, and by use of performance goals as noted in recommendation 2.(c) below. Followup will be accomplished by means of case file and on-site audits.

- (b) OSHA provide investigators with training that addresses both the legal and highly technical issues unique to ERA and EPA investigations, and incorporate such training enhancements into its formal investigator training program.**

A specialized course to cover ERA and EPA investigations is currently under development. In addition, we will be conferring with the EPA, NRC, and DOE to invite representatives from those agencies to speak at OSHA training sessions and conferences and to explore the possibility of OSHA investigators attending appropriate training conducted by those agencies.

2. (a) OSHA eliminate confusion surrounding informal extension practices by investigators.

As noted above, we have provided instruction to the field regarding this recommendation. Further emphasis will be given at training courses, conferences, conference calls, and in the Investigator Manual with followup through case file and on-site audits.

(b) OSHA clarify the specific start and end dates for investigators to consistently calculate the thirty-day time frame for each case.

Again, as noted above, direction has already been provided as described in the attached memorandum. Further emphasis will be given at training courses, conferences, conference calls, and in the Investigator Manual with followup through case file and on-site audits.

(c) OSHA develop monitoring/oversight guidelines and goals for supervisors responsible for ERA and EPA whistleblower cases, and include such goals in individual performance standards and agency performance measures.

In June 1998 the Assistant Secretary approved recommendations of the Whistleblower Taskforce to adopt seven specific performance measures to gauge the success of the program. One of the seven measures assesses timeliness in terms of the average number of days to complete an investigation. This measure will be used to monitor the relative priority given to EPA and ERA cases; field managers and supervisors will be held accountable accordingly. We expect this system to be in place not later than April 2001.

(d) OSHA issue a revised/updated Investigator's Manual incorporating, as appropriate, OIG recommendations contained in this report.

As noted in the OIG report, OSHA is in the process of completing an updated version of the Investigator's Manual. With the recent appointment of a new Director of the Office of Investigative Assistance, we expect that some additional delay will occur, not only to incorporate the current OIG recommendations, but to allow the new Director time to consider any additional modifications. We expect the manual to be issued not later than April 2001.

Again, thank you for the review and evaluation of our Whistleblower Program. I will advise you in writing upon completion of the corrective actions.

Cc: Richard Fairfax, Director, Directorate of Compliance Programs
John Spear, Director, Office of Investigative Assistance
OSHA Regional Administrators