

EPA ENFORCEMENT REORGANIZATION

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

OCT 12 1993

THE ADMINISTRATOR

MEMORANDUM

TO: Addressees

FROM: Michael Vandenberg

DATE: October 12, 1993

SUBJECT: EPA Enforcement Reorganization

Attached is an advance copy of EPA Administrator Carol Browner's decision memorandum regarding the reorganization of the Agency's enforcement operations. The memorandum will be released publicly on Wednesday, October 13. Please feel free to call Steve Herman or me if you have any suggestions or questions.

Addressees

Katie McGinty
T.J. Glauthier
Brian Burke
Cathy Zoi



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

OCT 12 1993

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: New Strategic Enforcement Organization

TO: All EPA Employees

With this memorandum, I am announcing a new strategic enforcement organization for EPA. As you know, I believe that strong and effective enforcement is fundamental to virtually everything we hope to accomplish as an agency. The improvements that I am announcing today will further strengthen our enforcement capability and position EPA to move into a new era of environmental protection.

This memorandum outlines the structure and functions of the new organization, explains which programs will be transferred to the Office of Enforcement, and includes a strategy for fully implementing the reorganization. My decisions are the product of the outstanding work and vision of EPA's Enforcement Reorganization Task Force, the advice of EPA's Senior Leadership Council, and the extensive agency and public comment we have received during the reorganization process. As we move forward to implement these improvements, please rest assured that I am committed to making the transition a smooth and positive experience for all affected employees.

OPERATING PRINCIPLES

As captured by the Task Force reports, the reorganization effort has generated a great deal of understanding regarding the purpose and potential of EPA's enforcement program. In my view, the more compelling principles that surfaced during this process include the following:

- o The people in EPA's enforcement operations are the heart of our enforcement program, and the new organization should encourage teamwork, career development and innovation.
- o EPA's enforcement program must afford equal protection from environmental violations for all citizens, regardless of race or economic status.

2

o Although we must maintain an imposing enforcement presence as a means of deterring noncompliance, traditional enforcement should be seen as a tool for achieving the broader goal of compliance and not as an end unto itself.

o Enforcement success should be measured more by reference to improvements in compliance rates and environmental quality, not just by reference to the number of cases brought or other activity counts.

o "Compliance assistance" activities should complement traditional enforcement and program efforts.

o To be most effective in measuring compliance and improving targeting of enforcement resources, national enforcement strategies should increasingly be organized around "sectors" of the economy.

o Multi-media, whole facility approaches to enforcement represent the future of environmental protection and should be pursued whenever appropriate.

o Given the media-specific orientation of our authorities and most of the states, care must be taken to avoid losing media sophistication in the new organization.

o One of EPA's key objectives must be building the capacity of State, local and tribal enforcement authorities.

THE NEW STRATEGIC ENFORCEMENT MODEL

The organizational option that I have selected, depicted in Attachment A to this memorandum, is fully consistent with these principles. The Task Force initially identified four different options for organizing EPA's enforcement function: a media-based model; a sector-based model; a functional model; and a bio-resource model. Each of the options enjoyed some support and had both strengths and weaknesses. The strategic enforcement model that I have selected attempts to pull together the best features from each of the models. Thus, as described further below, it retains the media strength of the organization, achieves the streamlining and efficiencies offered by functional divisions of labor, and at the same time makes major strides in improving the agency's capacity to address noncomplying sectors and sensitive ecosystems and populations. Additionally, given the diversity of activity within the organization, I am confident that the new organization will provide a challenging and rewarding work environment for all enforcement employees.

As a starting point, I am changing the name of the Office of Enforcement to The "Office of Enforcement and Compliance Assurance" (OECA). This is more than symbolic. It conveys the

broader aim of the enforcement mission-- to ensure compliance with this nation's environmental laws.

Even more importantly, the new framework fundamentally reorients the agency's enforcement program to focus squarely on compliance problems that pervade certain sectors of the regulated community. This "sector approach," which was praised and encouraged by a significant number of commenters, should enable the agency to: 1) address noncomplying sectors more effectively; 2) allow for "whole facility" approaches to enforcement and compliance; 3) measure with greater precision rates of compliance and the effectiveness of enforcement strategies; 4) augment enforcement strategies with appropriate compliance enhancement activities; and 5) develop sector expertise which should improve performance in all aspects of the agency's enforcement program, including the pursuit of pollution prevention remedies.

One of the key delivery mechanisms for sector strategies will be a new "Office of Compliance." Working closely with the other OECA offices, other programs, and the Regions and states, this office will have the lead role for enforcement strategic planning (including targeting for ecosystem protection and environmental justice), inspection targeting, data management and integration, compliance monitoring, and compliance assistance. As reflected by the proposed divisional structure for this office, the strategic vision for enforcement will be fed by integrated enforcement data and driven by a combination of sector, ecosystem and population-based planning.

Just as the Office of Compliance will primarily focus on the planning end of the enforcement continuum, another new office, The "Office of Regulatory Enforcement," will have the lead role for the other end of the continuum-- supporting enforcement case development. This role includes ensuring that our regulations are enforceable and sustainable, providing guidance and national policy on issues that arise in the adversarial process, and participating in the development and prosecution of enforcement cases.¹

The Office of Regulatory Enforcement will be organized primarily around media (with one multi-media division to support multi-media cases and initiatives) so that media-specific enforcement expertise can continue to be applied to the agency's rulemaking and litigation efforts. Similarly, the Office of Site

¹By separating compliance assistance activities from case work, I believe we have addressed the concern that some raised that a sector-based approach might lead to "capture" of the agency by the regulated community. The Office of Regulatory Enforcement will ensure that we are responding aggressively and consistently when we identify instances of noncompliance.

Remediation, which will be the home of the Superfund and RCRA corrective action enforcement programs for both private and federal facilities,² will ensure that the new organization is positioned to meet the unique demands of these programs.

The Office of Criminal Investigations will, given the special reporting requirements established by the Pollution Prosecution Act, retain its present form, as will the National Enforcement Investigations Center, in light of its support of virtually all other OECA offices. The Office of Federal Activities, which manages the agency's NEPA work and tribal programs, will also be left intact for the present time.³

Finally, there will be two smaller offices aligned with the OECA front office-- an Office of Resource Management and Administrative Support to meet the substantial budget and administrative support needs of the new organization, and an Office of Enforcement Capacity, which will be the locus of the National Enforcement Training Institute (servicing federal, state, local and tribal authorities), environmental justice coordination, national accomplishment reporting, and liaison with national organizations of state and local enforcement authorities.⁴

To provide necessary support for this new, interdisciplinary organization, and to ensure appropriate attentiveness to both single-media and cross-program objectives, I am providing for two deputy assistant administrators in the new organization. I will look to Steve Herman to determine how best to divide responsibilities between the two deputies.

²For further discussion of the remedial programs, see the section below entitled, "Programs Being Transferred." Notably, non-remedial regulatory enforcement against federal facilities will be handled under the new structure in the same manner as private facilities (*i.e.*, the shared responsibility of the offices of Compliance and Regulatory Enforcement).

³This office is discussed further below in the section entitled, "Programs Being Transferred."

⁴Most of the contact with particular states regarding enforcement matters occurs at the regional level, making the question of regional/headquarters alignment, to be considered in the next phase, all the more important. With respect to national level coordination with state and local government associations, the Office of Compliance and the Office of Regulatory Enforcement will, in addition to the liaison work of the Enforcement Capacity office, play key roles in working with states on priorities and policies.

PROGRAMS BEING TRANSFERRED

I am persuaded, based on my review of the Task Force report and the submissions of a number of offices, that the only way to achieve the efficiencies that we seek, to fully conform enforcement policy and practice, and to establish a unified enforcement voice, is to move all enforcement and compliance monitoring programs into the new Office of Enforcement and Compliance Assurance. In this regard, I am guided by the "Definition of Enforcement" developed by the Task Force and attached here as Attachment B. I am including in this transfer the enforcement and compliance functions of the "special programs" identified in the Task Force report: 1) the remedial enforcement programs (Superfund, RCRA corrective action, Leaking Underground Storage Tanks, and Oil Pollution Act) currently in OSWER; 2) the wetlands, Underground Injection Control, and ocean dumping programs currently in the Office of Water; and 3) the Office of Mobile Sources in the Office of Air and Radiation.⁵

With respect to Superfund, I am adopting the functional division of responsibility developed by the Task Force, attached here as Attachment C. In essence, as with other programs, we will look to OECA to perform such traditional enforcement functions as monitoring compliance with Superfund obligations and developing administrative and judicial actions; OSWER will be responsible for "standard setting" in the form of establishing site specific clean up requirements.

With respect to the programs currently located in the Office of Enforcement that the Task Force identified as "nontraditional"-- NEPA, the tribal program, and contractor listing-- I am shifting the contractor listing function to OARM to be incorporated into the suspension and debarment program, and leaving the NEPA and tribal programs in OECA for the present. I am inclined to move the tribal program as a means of increasing its profile and priority, but we will be expeditiously pursuing this issue on a separate track. Similarly, while NEPA is clearly different in kind from other OE programs, moving this function at this time would be precipitous in light of the potential for change in EPA's NEPA work as a result of pending legislation.

The net result of all of the resource transfers will be a headquarters enforcement office roughly double the size of the former Office of Enforcement.

⁵The Mobile Sources operations that will transfer include the Investigations and Enforcement Branch of the Field Operations and Support Division and the investigative and case support elements in the Manufacturers Operations Division.

NEXT STEPS

1. Development of a detailed plan-- I am directing Steve Herman, the Assistant Administrator for Enforcement, to develop a detailed plan consistent with the framework that I have selected. All personnel and resource placement issues will be addressed in the plan, which may vary at the margins from the chart in Attachment A to the extent necessary to ensure optimal alignment of functions and people. Attachment D to this memorandum describes the process and time line for this part of the effort. It calls for the establishment of an "Organization Implementation Project" (OIP), which will be led by Sally Seymour of OWPE (project director) and Craig Hooks of OE (deputy project director). This essentially will be a management level group that will plug into existing staff structures for support. I have asked Steve to ensure that the openness that characterized the Task Force effort also be reflected in the OIP. Given the significant contributions thus far by our union representatives, we look forward to working with the unions on this next phase as well.

Once the detailed plan has been developed, it will go through the traditional green border process for agency sign-off. Given the participatory nature of this reorganization effort from the outset, I anticipate that the green border process will go smoothly and quickly.

2. Resource transfer decisions-- I expect to make a decision regarding resource transfers (FTEs and dollars) associated with the reorganization within the next 10 days. To ease the transaction burden for everyone involved, I will be looking to transfer whole enforcement units whenever possible (i.e., the on-board personnel, the resources necessary to support the on-board staff, and the resources that the unit manages).⁶ Determining where in OECA these resources will reside in the new organization will be the task of the OIP.

3. Data Management Issues-- There are a number of outstanding issues regarding where to place management responsibility for the agency's compliance data systems. In my view, integrated compliance data is one of the keys to the

⁶This should be possible for most of the organizations at issue, including the Stationary Source Compliance Division in OAR, the Office of Compliance Monitoring in OPPTS, the RCRA Enforcement Division in OSWER, the Enforcement Division of the Office of Wastewater Enforcement and Compliance in OW, the Enforcement Branch of the Enforcement and Program Implementation Division in the Office of Groundwater and Drinking Water (OW), and the Investigations and Enforcement Branch in the Field Operations Division in the Office of Mobile Sources (OAR).

7

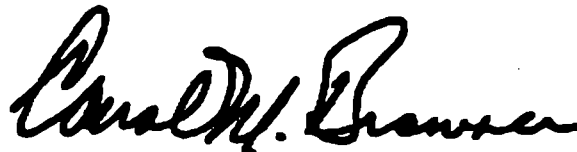
Agency's success. Issues related to data management will be resolved within the next 10 days.

4. Regional Impact Task Force-- Within the next 30 days, I will be establishing a Regional Impact Task Force, outlined in Attachment E to this memorandum, which will work on a number of critical outstanding issues, such as ensuring proper regional alignment with the new headquarters structure, reviewing the respective roles and responsibilities of headquarters and the regions, and considering state issues associated with the reorganization. As reflected in Attachment E, we will provide for state participation in this effort as a means of ensuring that regional/state alignment, a key area of concern, is properly taken into account.

5. Impacts on Program Office organization-- I am directing each of the media Assistant Administrators to review their operations and inform me within 90 days of any changes in their organizations that may be necessary as a result of the enforcement reorganization.

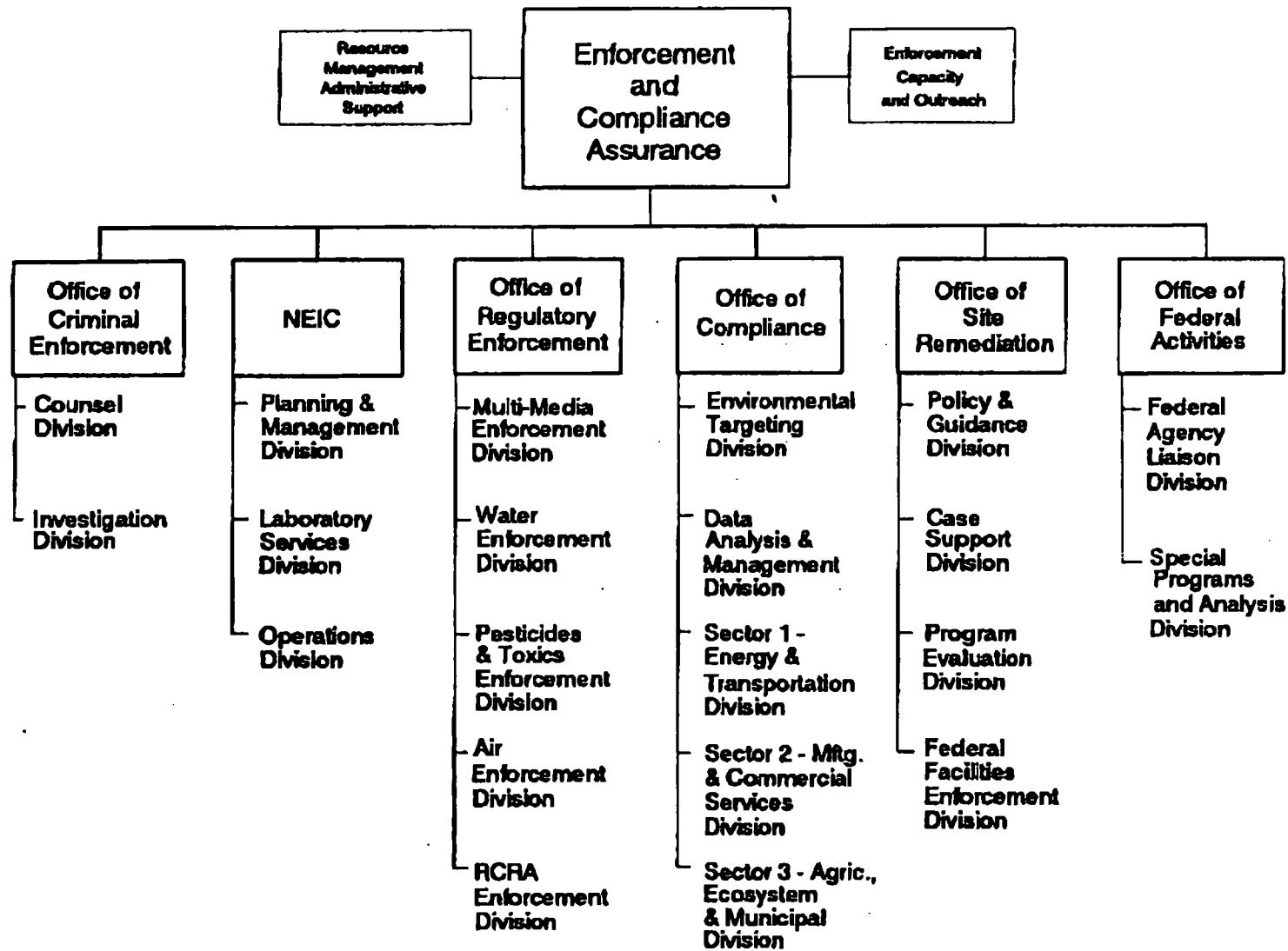
CONCLUSION

In conclusion, I want to restate my thanks to the Enforcement Reorganization Task Force and all the staff who supported the Task Force for a job very well done. The spirit of openness that has prevailed throughout this process and the willingness of Task Force members to "put on their agency hats" were exemplary. Our new Office of Enforcement and Compliance Assurance promises everything that we set out to accomplish through this reorganization. Through the new organization we will provide a positive and rewarding climate for our excellent enforcement staff, increase efficiency and eliminate duplication of effort; provide an integrated, targeted approach to environmental enforcement; and achieve uniformity in enforcement policy and decision making. At bottom, the new organization will enable the agency to speak with one, consistent and well-considered enforcement voice to the public, the Congress, and the regulated community.



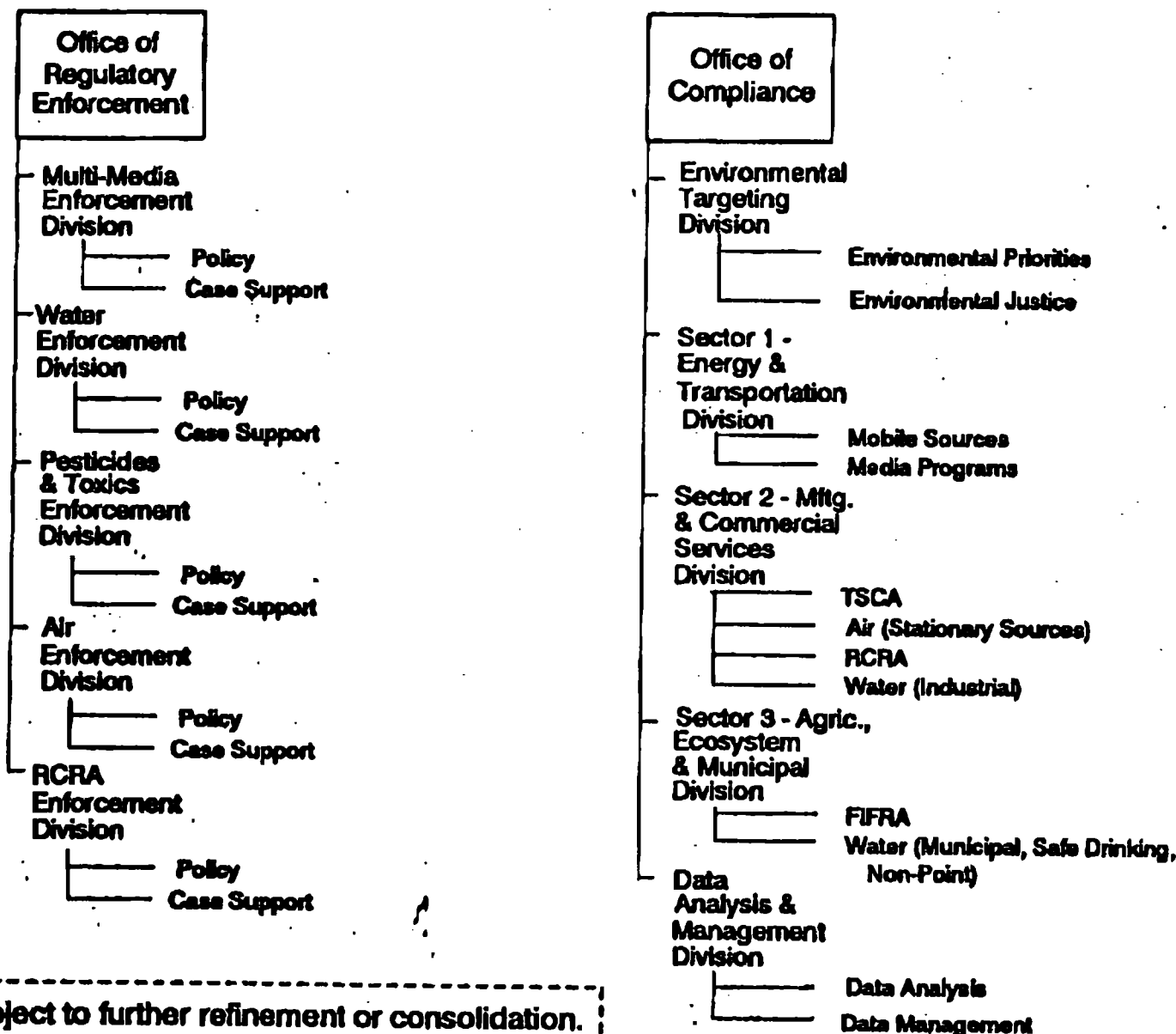
Carol M. Browner

STRATEGIC ENFORCEMENT MODEL



STRATEGIC ENFORCEMENT MODEL PROPOSED BRANCH STRUCTURE

10/07/93



Branches subject to further refinement or consolidation.