



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Special Report

Congressional Request on EPA Enforcement Resources and Accomplishments

Report 2004-S-00001

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Abbreviations

CID	Criminal Investigation Division
EPA	Environmental Protection Agency
FTE	Full Time Equivalents
FY	Fiscal Year
NPDES	National Pollutant Discharge Elimination System
OCEFT	Office of Criminal Enforcement, Forensics, and Training
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
OMB	Office of Management and Budget
PCS	Permit Compliance System
SAC	Special Agent-in-Charge



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INSPECTOR GENERAL

Foreword

This report responds to a July 24, 2003 letter to the Environmental Protection Agency (EPA) Office of Inspector General (OIG) from eight Senators and four Representatives. The letter requested OIG assistance in assessing: (1) whether the EPA Office of Enforcement and Compliance Assurance (OECA) has sufficient agents and resources to achieve its criminal and civil enforcement objectives; (2) EPA's additional duties due to increased homeland security; (3) whether enforcement resources are being utilized appropriately and effectively; (4) the effectiveness of OECA's management approach and structure; and (5) the accuracy of EPA's representations of its enforcement efforts.

The letter requested information on eight issues. Those issues, along with summaries of what we found, are in this report. To expedite the request to provide information that could be used to finalize EPA's Fiscal Year 2004 budget, our work consisted primarily of obtaining and analyzing information from EPA's management information systems and interviewing individuals involved in EPA's enforcement program. Those interviewed included Special Agents-in-Charge involved with EPA's criminal enforcement activities and regional officials involved with EPA's civil enforcement actions. Due to time constraints, we were unable to verify the accuracy of the data obtained from EPA's systems. Appendix A of this report further describes our scope and methodology.

Regarding EPA's budget recommendations, EPA officials asked that we not disclose the information they provided because Office of Management and Budget Circular A-11, section 22, prohibits releasing such information. To accommodate their request, we have not included the estimates for resources, although we mention some of the needs they identified. Also, although we have not specifically answered the questions about the sufficiency of resources or the effectiveness of deterrence, we offer the insights gained by our prior work and other evaluations.

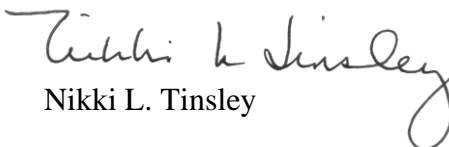

Nikki L. Tinsley

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Issue 1

Enforcement Duties and Workload

1. Recent press accounts have suggested that EPA's OECA may require supplementary resources in order to fulfill its core mission and its recently assigned homeland security duties. EPA disputes these claims. Please identify and describe changes to EPA's criminal and civil enforcement duties and workload due to homeland security requirements since September 11, 2001. In your assessment, please include federal legislative and regulatory requirements, counter-terrorism activities, emergency response activities, assisting local law enforcement, and shifts in other agencies priorities, and budget and personnel (FTE-Full Time Equivalents) data for the last three complete fiscal years as well as for FY 2003 thus far.

The events of September 11, 2001, focused the nation and the Environmental Protection Agency (EPA) on homeland security. In response to the need for homeland security, EPA shifted priorities, budget, and personnel to activities that would support homeland security.

Changes to Enforcement Duties and Workload Since September 11, 2001

Following September 11, 2001, EPA's Office of Enforcement and Compliance Assurance (OECA) assumed additional duties in conjunction with nation-wide efforts to improve homeland security. OECA's Office of Criminal Enforcement, Forensics, and Training (OCEFT) now provides environmentally related investigative and technical support to the Federal Government's homeland security program. Thus, after September 11, the OCEFT mission became two-fold. Besides investigating environmental crimes, OCEFT would provide 100-percent response to homeland security environmental threats – such as chemical and water acts of terrorism – behind the lead of the Federal Bureau of Investigation and the Secret Service. Homeland security not only includes anti-terrorism activities but protecting the EPA Administrator. According to OECA staff, all cabinet-level personnel must be provided with protective service details. The Administrator transferred this responsibility from the Office of Inspector General (OIG) to OCEFT.

Some of the specific activities OECA's criminal enforcement staff has taken on include:

- Working with other Federal agencies on homeland security investigations (e.g., conducting interviews of foreign nationals).
- Participating in providing public safety at national security special events (e.g., the Superbowl and July 4th celebrations).
- Assisting in the anthrax investigation at the U.S. Capitol.
- Establishing the National Counter-Terrorism Evidence Response Team.
- Participating in the Joint Terrorism Task Force and more recently established Anti-Terrorism Task Force.
- Giving awareness training and presentations to local and State water authorities.

These duties came from existing environmental laws, as well as three Presidential Decision Directives issued by President William J. Clinton and a Homeland Security Presidential Directive issued by President George W. Bush, as shown in Table 1.1:

**Table 1.1
Directives Issued**

Directive	Year	Lead Agency	Title and Purpose
Presidential Decision Directive 39	1995	Various Lead Agencies Key Leads: <i>Federal Bureau of Investigation</i> - head investigative agency for domestic incidents. <i>U.S. State Department</i> - protect U.S. facilities and citizens abroad	U.S. Policy on Counterterrorism: Outlines how the United States should ready itself to contend with domestic and international terrorism: 1. Reducing our vulnerabilities 2. Deterring terrorism 3. Responding to terrorism 4. Preventing/removing weapons of mass destruction
Presidential Decision Directive 62	1998	Office of the National Coordinator for Security, Infrastructure Protection and Counter-Terrorism	Combating Terrorism: Addresses deterrence and prevention of terrorist attacks, as well as containment and consequence management in the event of a strike.
Presidential Decision Directive 63	1998	Various Lead Agencies Some key lead agencies for Sector Liaison: <i>EPA</i> - water supply <i>Commerce</i> - information and communication <i>Treasury</i> - banking and finance	Critical Infrastructure Protection: Aims to eradicate any significant vulnerability to both physical and cyber attacks on U.S. critical infrastructures, especially the cyber systems, in order to secure the stability and capability of critical infrastructures.
Homeland Security Presidential Directive 5	2003	Department of Homeland Security	Management of Domestic Incidents: Enhances the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system.

Shifts in EPA Budget and Personnel

EPA's budget is presented to Congress by the goals in EPA's strategic plan. Goal 9 states the Agency will ensure full compliance with the laws intended to protect human health and the environment. This goal is part of EPA's national enforcement and compliance assurance program, which is managed by OECA. Funding for the enforcement program is based on what

the President requests and Congress enacts through appropriation legislation. EPA then develops an operating plan with limits to ensure that costs do not exceed the authorized amounts.

OECA received 80 full-time equivalents (FTE) and about \$11 million for homeland security in a supplemental appropriation that EPA received in the Spring of 2002. Specifically, 70 FTE were from the Environmental Program and Management appropriation, and 10 FTE were from the Superfund appropriation. According to the former OCEFT Director, OCEFT did not fill all the authorized FTE from the supplemental appropriation because it was uncertain whether the positions would be included in the regular appropriations for the next year. Another OCEFT official said that they hired 25 people to handle homeland security.

The President's budget request for 2003 did not include the level of funding that had been provided by the 2002 supplemental appropriation; it included 30 FTE and about \$4 million to support homeland security. For 2004, EPA sought an increase for homeland security in its request to the Office of Management and Budget (OMB). The President's 2004 budget request included the 30 FTE and about \$4 million.

The Goal 9 operating plan for Fiscal Years (FYs) 2000 through 2003, as well as the President's request for 2004, is summarized in Table 1.2.

Table 1.2
Goal 9 Resource Changes for Fiscal 2000-2004

Description	Dollars (in thousands)	FTE
2000 Operating Plan	\$376,348.1	2,570.8
Difference*	<u>\$22,067.3</u>	<u>(17.0)</u>
2001 Operating Plan	\$398,415.4	2,553.8
Difference*	<u>(\$4,581.6)</u>	<u>(64.9)</u>
2002 Operating Plan	\$393,833.8	2,488.9
Difference*	<u>\$12,605.7</u>	<u>(12.0)</u>
2003 Operating Plan	\$406,439.5	2,476.9
Difference*	<u>\$24,121.0</u>	<u>3.5</u>
2004 President's Request	<u>\$430,560.5</u>	<u>2,480.4</u>

* Represents the difference between the fiscal year operating plans.

** The 2002 Operating Plan included the supplemental appropriation

Table 1.3 summarizes the Goal 9 dollars, by program objective, from the President's request, the enacted appropriation, the operating plan, and actual costs. During FYs 2000-2003 (and planned for FY 2004) there were two objectives under Goal 9. For FY 2000 and 2001, these objectives

were (1) “Enforcement Tools to Reduce Non-Compliance,” and (2) “Increase Use of Auditing, Self-Policing Policies.” Starting in FY 2002, the objectives changed to (1) “Increase Compliance Through Enforcement,” and (2) “Promote Compliance Through Incentives and Assistance.”

Table 1.3
Goal 9 Dollars (in thousands)
Request, Enacted, Operating, and Actual for Fiscal 2000-2004

FY	Objective	President's Request	Enacted Budget	Operating Plan	Actual Costs
2000	01	\$292,917.6	\$322,387.5	\$323,360.1	\$320,647.2
	02	<u>\$38,417.4</u>	<u>\$49,417.2</u>	<u>\$52,988.0</u>	<u>\$50,291.8</u>
	Total	<u>\$331,335.0</u>	<u>\$371,804.7</u>	<u>\$376,348.1</u>	<u>\$370,939.0</u>
2001	01	\$351,306.7	\$345,554.5	\$345,554.5	\$335,773.1
	02	<u>\$52,464.8</u>	<u>\$52,860.9</u>	<u>\$52,860.9</u>	<u>\$55,786.0</u>
	Total	<u>\$403,771.5</u>	<u>\$398,415.4</u>	<u>\$398,415.4</u>	<u>\$391,559.1</u>
2002*	01	\$356,652.5	\$337,781.6	\$338,137.5	\$345,342.0
	02	<u>\$54,563.2</u>	<u>\$55,768.5</u>	<u>\$55,696.3</u>	<u>\$54,049.1</u>
	Total	<u>\$411,215.7</u>	<u>\$393,550.1</u>	<u>\$393,833.8</u>	<u>\$399,391.1</u>
2003**	01	\$346,590.5	\$346,181.7	\$349,251.7	\$274,499.5
	02	<u>\$55,872.4</u>	<u>\$55,907.2</u>	<u>\$57,187.8</u>	<u>\$44,155.9</u>
	Total	<u>\$402,462.9</u>	<u>\$402,088.9</u>	<u>\$406,439.5</u>	<u>\$318,655.4</u>
2004	01	\$372,173.1			
	02	<u>\$58,387.4</u>			
	Total	<u>\$430,560.5</u>			

* The 2002 Enacted Budget and Operating Plan included the supplemental appropriation.

** The 2003 Actual Costs are as of August 28, 2003.

Table 1.4 provides the same information for the FTE related to Goal 9. Both the enacted dollar and FTE figures for FY 2002 were less than for 2001, even though the 2002 figure included the supplemental appropriation EPA received in response to the events of September 11, 2001.

Table 1.4
Goal 9 FTE
Request, Enacted, Operating and Actual for Fiscal 2000-2004

FY	Objective	President's Request	Enacted Budget	Operating Plan	Actual FTE
2000	01	2,192.1	2,148.1	2,148.2	1,925.4
	02	<u>348.0</u>	<u>422.6</u>	<u>422.6</u>	<u>388.6</u>
	Total	<u>2,540.1</u>	<u>2,570.7</u>	<u>2,570.8</u>	<u>2,313.9</u>
2001	01	2,149.2	2,130.5	2,130.5	1,905.7
	02	<u>423.5</u>	<u>423.3</u>	<u>423.3</u>	<u>399.0</u>
	Total	<u>2,572.7</u>	<u>2,553.8</u>	<u>2,553.8</u>	<u>2,304.6</u>
2002 *	01	1,910.3	2,075.9	2,072.6	1,990.5
	02	<u>420.0</u>	<u>416.6</u>	<u>416.3</u>	<u>405.6</u>
	Total	<u>2,330.3</u>	<u>2,492.5</u>	<u>2,488.9</u>	<u>2,396.1</u>
2003 **	01	1,932.6	2,071.1	2,074.2	1,804.7
	02	<u>398.1</u>	<u>399.3</u>	<u>402.7</u>	<u>371.6</u>
	Total	<u>2,330.7</u>	<u>2,470.4</u>	<u>2,476.9</u>	<u>2,176.3</u>
2004	01	2,079.3			
	02	<u>401.1</u>			
	Total	<u>2,480.4</u>			

* The 2002 Enacted Budget and Operating Plan included the supplemental appropriation.

** The 2003 Actual FTE are as of August 29, 2003.

Three key activities under the national enforcement program are civil enforcement, criminal enforcement, and homeland security. Based on information provided by OECA, the FTE from the enacted budgets associated with each activity for 2000-2003 are summarized in Table 1.5.

Table 1.5
Enacted Budget FTE
For Selected Key Activities

FY	Civil Enforcement	Criminal Enforcement	Homeland Security	Total
2000	957.0	246.5	0.0	1,203.5
2001	956.7	248.5	0.0	1,205.2
2002	915.0	242.6	80.0	1,237.6
2003	932.5	238.5	30.0	1,201.0

Issue 2

Budgets and Costs

2. Provide specific numbers concerning EPA's enforcement budget and FTE by program and region within OECA between FY 2000 and FY 2003 as compared with the requested FY 2004 budget.

a. Please identify OECA's criminal and civil enforcement needs, requests and appropriations between FY 2000 and FY 2003 and prospectively for FY 2004. In doing so, please report and compare field needs assessments and requests, EPA's budget recommendations, the administration's budget requests, FY and supplemental appropriations, and operating plans. Please provide data by division within OECA as well as for OECA as a whole. We are additionally interested in finding out how many FTE's are engaged solely in ensuring compliance with and enforcing New Source Review and Superfund requirements during the above mentioned time frame.

b. Please provide us with a breakdown of contracting expenses allocated by OECA division between FY 2000 and FY 2003.

c. Using the data obtained in (a) above, please evaluate whether OECA has sufficient budget and FTE by division to adequately manage its enforcement program and enforce the nation's environmental statutes.

The tables on budget and cost information for EPA enforcement activities are presented in this report in three ways: Goal 9, OECA, and the national enforcement and compliance assurance program. There is some overlap in what is covered by these three perspectives, but also some differences. Table 2.1 on the next page depicts these relationships. As stated in Issue 1, Goal 9 covers EPA's work to ensure full compliance with the laws intended to protect human health and the environment. It includes activities of OECA, other major EPA organizations, and the regional offices. OECA, which manages the national enforcement and compliance assurance program, performs activities under Goal 9, Goal 5 ("Better Waste Management, Restoration of Contaminated Sites, and Emergency Response"), and Goal 7 ("Quality Environmental Information"). The national enforcement and compliance assurance program includes OECA plus activities by the EPA regional offices under Goal 9 and Goal 5. Funding for the EPA enforcement activities comes from various appropriations.

OECA prepares the dollar and FTE figures for the national enforcement and compliance assurance program. The budget proposals for the enforcement program included a total for the regions, but not a breakdown of the request by region. In recent years, EPA's budget recommendation to OMB for the national enforcement program has been for more dollars than the President's budget request. Because budget preparation at EPA is a top-down process, according to OECA staff, the offices do not spend much time on needs assessments. Due to weaknesses in OECA's systems and information for tracking workload and measuring results, as

well as time constraints, we were unable to assess whether OECA has sufficient resources to enforce the nation’s environmental statutes.

**Table 2.1
Relationship Between OECA, EPA Goals,
and the National Enforcement and Compliance Assurance Program**

Organization	Goal 9	Goal 5 *	Goal 7 *
Region 1	XXX	[Green Shaded Area]	
Region 2	XXX		
Region 3	XXX		
Region 4	XXX		
Region 5	XXX		
Region 6	XXX		
Region 7	XXX		
Region 8	XXX		
Region 9	XXX		
Region 10	XXX		
Office of Enforcement and Compliance Assurance	XXX	[Green Shaded Area]	
Office of Administration and Resources Management	XXX		
Office of Chief Financial Officer	XXX		
Office of General Counsel	XXX		

* This includes only the enforcement-related activities of the goal.

- XXX = Goal 9. See Tables 1.2, 1.3, 1.4, B.1, B.2, and B.3.
- [Orange Box] = Office of Enforcement and Compliance Assurance. See Tables B.4, B.5, B.6, and B.7.
- [Green Box] = National enforcement and compliance assurance program, which is managed by OECA. See Tables 1.5, 2.2, B.8, B.9, B.10, B.11, and B.12.

Preparing the Enforcement Budget

Preparing EPA's budget is a top-down process. The Administrator and top managers decide on the initiatives and targets for the proposed budget. Thus, in OECA, the offices prepare justifications for the figures provided to them.

Following is a summary of how EPA's budget recommendation to OMB for the national enforcement and compliance assurance program differed from the President's budget request (see Table 2.2). Except for FY 2000, when the figures were the same, EPA requested more dollars for the program than what the President requested.

OCEFT did submit requests for funding initiatives for FY 2000, 2001, and 2003. These initiatives included: establishing a National Enforcement Experts

Clearinghouse, providing additional field support, providing training on the internet, furnishing the new laboratory in Denver, obtaining a secure data system, and establishing a senior environmental enforcement training corps. They did not include a counter-terrorism initiative for FY 2001 that was identified in a July 1999 memorandum because the OCEFT official believed OMB would not fund it. Some of these initiatives, like furnishing the Denver laboratory, were incorporated in the President's budget request. Others, like the secure data network, were not.

Besides these initiatives, both OCEFT and the Office of Regulatory Enforcement prepared requests for funds that might become available during the year. For example, late in FY 2002, OCEFT asked for funding for digital radios, a secure data network, and background investigations, so the staff could get top secret clearances. A similar request was made in 2003 and, according to an OECA official, a small portion of their needs were met.

Goal 9 Costs by Major Organization

Various tables related to Issue 2 are in Appendix B. [Table B.1](#) in that appendix summarizes Goal 9 actual costs by major organization ("major organizations" generally equate to an EPA headquarters or regional office) for FY 2000-2002 and for 2003 as of August 28, 2003.

Similarly, [Table B.2](#) summarizes the Goal 9 actual FTE by major organization as of August 29, 2003. Part of Goal 9 relates to Superfund. Therefore, some of the resources for the program were charged to that appropriation. [Table B.3](#) summarizes the actual Superfund FTE by major organization.

Table 2.2
How did EPA's request to OMB differ from the President's request?

FY	Dollars	FTE
2000	Same	Same
2001	More	More
2002	More	*
2003	More	Less

* FTE figures for FY 2002 were not required in the budget recommendation to OMB, according to Agency records.

OECA Costs

OECA's costs during FY 2000-2003 were primarily charged to Goal 9. As shown in [Table B.4](#), personnel in OECA also performed work related to Goals 5, 6, and 7. [Table B.5](#) shows OECA costs by office and, where possible, by division. Similarly, [Table B.6](#) summarizes actual FTE. Part of the costs incurred by OECA were for contracts and assistance agreements. These costs are summarized in [Table B.7](#).

National Enforcement and Compliance Assurance Program Resources

The national enforcement and compliance assurance program, which is managed by OECA, includes all of OECA, plus the regional offices' activity under Goal 9 and Goal 5. OECA provided figures related to the national enforcement program. [Table B.8](#) summarizes resource changes in the national enforcement program between years from FY 2000 to 2004. [Table B.9](#) summarizes the operating plan in dollars, by regional and OECA offices, for this program in FY 2000-2003. [Table B.10](#), [Table B.11](#), and [Table B.12](#) summarize the budgeted FTE for the national enforcement program, by regional and OECA offices, by appropriation, and by goal, respectively, in FY 2000-2003.

FTE for New Source Reviews

EPA does not track costs for specific types of inspections, such as New Source Reviews under the Clean Air Act. Therefore, we were unable to identify actual FTE engaged in specific enforcement and compliance activities. However, to answer a 2004 budget question from the Senate Environment and Public Works Committee, EPA estimated that it had invested more than 200 FTE in New Source Review enforcement since 1999, or an average of about 67 FTE per year. To ascertain the FTE dedicated to New Source Review enforcement for the budget question, the OECA Office of Regulatory Enforcement's Air Enforcement Division queried each of the Regional air enforcement branch chiefs about the number of FTEs working on New Source Review enforcement since 1999. They added the numbers, along with the FTE assigned to New Source Review enforcement in OECA, and came up with the total of 200 FTE.

Sufficiency of Resources

Past OIG reports have noted funding shortfalls in various parts of the enforcement program. For example, OIG report 2000-P-00010, *Biosolids Management and Enforcement*, issued March 20, 2000, raised concerns surrounding OECA's decision not to commit enforcement resources to the biosolids program. In response to our report, an Agency official stated that enforcement resources were limited, and the biosolids program was a low priority for enforcement. OIG believes that this decision may result in increased non-compliance with biosolids regulations, which would increase risks to the environment and human health. According to OECA, EPA has taken actions to address biosolids violations, particularly where biosolids pose an immediate endangerment to human health or the environment.

A more recent report, OIG report 2003-M-00014, *EPA Should Take Further Steps to Address Funding Shortfalls and Time Slippages in Permit Compliance System Modernization Effort*, issued May 20, 2003, discussed in Issue 8, also identified funding concerns.

Although OCEFT management and our prior work have noted funding shortfalls in certain areas, EPA lacks sufficient information on workload and results that would allow us to evaluate the overall sufficiency of funds for EPA's enforcement activities. For example, as later discussed under Issues 3, 5, and 6, OCEFT does not have systems in place to track workload information, such as investigative leads transferred due to a lack of resources, that could be used to develop estimates for its budget. Also, as discussed under Issue 7, EPA lacks outcome measures that would allow EPA and others to evaluate the environmental results achieved. Having results information to compare with dollars invested in the enforcement program would be useful in making well-informed decisions about the level of investment that should be made in EPA's enforcement program.

Issue 3 Case Load

3. Recent news reports indicate that EPA has a backlog of 1,500 criminal cases due to inadequate resources. Please identify the extent, and provide a description, of any EPA criminal case backlog. Has EPA failed to prosecute or pursue any civil or criminal cases due, in any part, to insufficient resources?

Case Load

As noted in Table 3.1, EPA has a current case load of criminal cases and selected civil actions (under three laws) totaling about 3,800 cases. The 1,190 open criminal cases are at various stages of the criminal enforcement process, from the investigative stage through litigation. The open criminal cases include 961 at the “pre-indictment stage” (i.e., cases still within the criminal enforcement program’s investigative jurisdiction). Regarding civil cases, the information we sought from the Agency was limited to the three programs (other than Superfund) that encompass the major portion of the civil enforcement workload. Further, the OECA staff explained it was difficult to limit the information to cases at a specific stage in the enforcement process, as we had requested, “because of the nature of the case development process, we cannot generate a complete snapshot of our enforcement workload, where at any one time we may be resolving violations informally, gathering additional evidence following an inspection to develop a referral, or deciding whether to proceed administratively or judicially.”

**Table 3.1
Current Case Load**

Type of Case	No.
Criminal *	1,190
Civil **	
Clean Air Act	1,041
Resource Conservation and Recovery Act	874
Clean Water Act	<u>753</u>
Total	<u><u>3,858</u></u>

* As of August 26, 2003.

** As of August 9, 2003. Clean Air Act represents universe of High Priority Violators; Resource Conservation and Recovery Act represents universe of Significant Non-Compliers; and Clean Water Act represents major National Pollutant Discharge Elimination System facilities in Significant Non-Compliance.

When EPA develops sufficient evidence, EPA refers the case to the Department of Justice for criminal prosecution or civil enforcement. During FY 2002, 198 criminal cases were referred for Federal prosecution. However, the Department of Justice may decline to take the case. When this occurs in a criminal enforcement case, the OCEFT staff may refer the case to State prosecutors (52 criminal cases were referred for State prosecution in FY 2002) or EPA’s civil enforcement program. During FY 2002, 53 criminal cases were declined by Federal or State prosecutors orally, and 38 were declined in writing.

Pursuing Criminal Cases

OCEFT staff in the Criminal Investigation Division (CID) open criminal cases based on criteria in a 1994 policy memorandum on investigative discretion. The criteria are significant environmental harm and culpable conduct. Additionally, three of the five Special Agents-in-Charge we interviewed said they work with their EPA regional staff to address regional priorities and concerns. However, three of the five Special Agents-in-Charge also told us that they will not open a new case if they believe they do not have adequate resources to handle it. Instead, they will refer the leads to EPA's civil enforcement program or to State authorities. CID does not have an automated tracking system for leads, or know the number of leads transferred to others due to a lack of resources. The figures on the disposition of leads shown in Table 3.2 were compiled manually. This information will be automated when the Criminal Docket is replaced by the Case Results System.

Table 3.2
Disposition of Leads Received in Fiscal 2002

Under CID Review	Closed Prior to Referral	Referred to State/Local	Referred to EPA Civil Program	Referred to Other Federal	Opened as a Criminal Case
270 (14%)	415 (21%)	702 (35%)	188 (9%)	91 (5%)	310 (16%)

Table 3.3 summarizes the number of criminal cases opened and closed in recent fiscal years, and the number still open at the end of each year, or as of August 26, 2003, for fiscal 2003.

Table 3.3
Criminal Cases Opened, Closed and Outstanding – 2000-2003

	2000	2001	2002	2003 *
Initiated during the year				
Environmental crimes	477	482	484	435
Counter-terrorism	<u>0</u>	<u>0</u>	<u>190</u> **	<u>32</u>
Total	<u>477</u>	<u>482</u>	<u>674</u>	<u>467</u>
Closed during the year				
Environmental crimes	452	407	451	471
Counter-terrorism	<u>0</u>	<u>0</u>	<u>105</u>	<u>0</u>
Total	<u>452</u>	<u>407</u>	<u>556</u>	<u>471</u>
Open at end of the year				
Environmental crimes	1,001	1,076	1,109	1,073
Counter-terrorism	<u>0</u>	<u>0</u>	<u>85</u>	<u>117</u>
Total	<u>1,001</u>	<u>1,076</u>	<u>1,194</u>	<u>1,190</u>

* As of August 26, 2003

** After the FY 2002 accomplishment reports were issued, 10 additional counter-terrorism cases were identified. For consistency with the accomplishments reports, we have not included the additional cases.

As shown in Table 3.3, the number of cases still open at the end of recent years ranged from 1,001 to 1,194. With a few exceptions, most of the cases currently open were initiated after 1999. According to one Special Agent-in-Charge, for various reasons a case may go 30 to 60 days with little activity. An example cited by OECA was if another case is nearing litigation, the agent will need to concentrate on supporting that case for the U.S. Attorney. As another example, the five Special Agents-in-Charge said protecting the Administrator when the Administrator traveled did result in a period of time when the agents were unable to work on their environmental crime cases. This is because, when the Administrator traveled, agents in the field performed advance checks on sites the week before the Administrator's arrival, and provided protective services during the visit. To track the time spent by agents protecting the Administrator, CID opened cases for these protective service details. During FY 2002 and 2003, CID opened 150 and 141 cases for protective service details, respectively. However, the 150 cases in 2002 were not included in the number of criminal cases reported by CID. Four of the five Special Agents-in-Charge said they did not believe that protecting the Administrator was part of CID's mission to investigate environmental crimes.

Pursuing Administrative Actions and Civil Judicial Cases

We did not find evidence of failures to pursue civil cases. Due to time constraints, we were unable to review files, and had to rely on interviews with EPA regional officials for information about these cases. We interviewed officials in Regions 2 and 6 about Clean Air Act enforcement cases and in Regions 5 and 7 about Resource Conservation and Recovery Act cases. The data we received indicated delays in pursuing enforcement in some of the cases, but we did not find evidence of failures to pursue civil cases. In some cases, regional officials told us there were data errors and the facilities should not have been on the list because formal enforcement actions had been taken, or it had been determined that formal enforcement was not required.

The regional officials stated they did not always take formal enforcement actions within time frames established by EPA's enforcement policies. However, one regional official said they try to ensure the statute of limitations does not expire. Homeland security was not cited as a factor for delays in pursuing civil cases, but various other reasons were cited such as:

- Resources were needed for higher priority cases (e.g., special initiatives such as refineries and utilities under the Clean Air Act and wood treaters under the Resource Conservation and Recovery Act).
- Staff were assigned to work on major disasters (i.e., responding to the World Trade Center and Columbia shuttle disasters).
- A complex information request had to be prepared.
- EPA had to coordinate with State authorities.
- The attorneys had to be consulted.
- There was a turnover of experts, such as engineers, attorneys, and scientists.

Issue 4

Criminal Investigation Division Agents

4. Recent news accounts have asserted that EPA has inflated its numbers of Criminal Investigation Division (CID) agents by loosely defining "agent," which EPA disputes. Please assess EPA's requirements for qualification as an "agent," delineating different grades of agents and their responsibilities. Please provide the number of staff in each grade and compare these levels for each of the last three complete fiscal years and FY 2003 thus far.

We found no indication that EPA has loosely defined "agent." To pursue criminal investigations, OECA employs Special Agents who are series 1811 (Criminal Investigator) employees. These Special Agents are Federal law enforcement officers with arrest and seizure authority. They are responsible for investigating allegations of environmental crime activity, assisting prosecutors in developing cases, and providing support to a variety of enforcement partners. The Office of Personnel Management establishes the qualifications for series 1811 employees. To fill these positions, OECA uses vacancy announcements that reflect the Office of Personnel Management qualifications.

Most Special Agents work in CID within OECA's OCEFT. Over the last 4 years, the number of Special Agents in CID has varied from 171 to 211. The number of investigators in other parts of OECA has increased from 6 to 20 over the same 4 years, as shown in Table 4.1

According to the Pollution Prosecution Act of 1990, Criminal Investigators in OCEFT's predecessor organization should number at least 200 by October 1, 1995. As shown in Table 4.1, the number of Criminal Investigators has ranged from 179 to 223 between 2000 and 2003. Generally, CID agents comprised about 20 percent of the OECA staff. The lower number of Criminal Investigators in 2000 and 2001 can be attributed to a hiring freeze that was imposed on OECA, and thus on OCEFT and CID, between June 1999 and March 2001. It started as an Agency-wide freeze initiated by former Administrator Browner because Congress was expected to reduce the Agency budget for FY 2000. The freeze on OECA was continued by President Bush as part of a government-wide freeze. The freeze on OECA was lifted in March 2001.

Table 4.1
Number of OECA Staff in July 2000, 2001, 2002, and 2003

Description	2000	2001	2002	2003
Investigators in CID	173	171	211	203
Investigators not in CID	6	9	12	20
Other OECA employees	<u>706</u>	<u>690</u>	<u>729</u>	<u>761</u>
Total OECA Staff	<u>885</u>	<u>870</u>	<u>952</u>	<u>984</u>
CID Agents as % of OECA Staff	<u>20</u>	<u>20</u>	<u>22</u>	<u>21</u>

The Office of Personnel Management establishes the criteria for Criminal Investigators hired under series 1811. According to that Office, the grade level for these investigators varies with the complexity of assignments and level of responsibility. EPA's vacancy announcements and position descriptions for series 1811 Special Agents in CID reflect these requirements. For example, a grade 7 Special Agent serves in a trainee capacity while a grade 13 Special Agent handles difficult and complex investigations. According to the Special Agents-in-Charge we interviewed, this difference was reflected in the number of cases assigned to individual agents. Thus, less experienced agents were assigned fewer cases and spent more time in training.

As summarized in Table 4.2, the Special Agents in CID ranged in grade from 5 to senior executive. After the hiring freeze was lifted in March 2001, the number of entry-level agents (i.e., grade 7) increased substantially. However, in all 4 years the proportion of management-level agents (those in grades 14 and above) remained under 20 percent of the agents.

Table 4.2
CID Special Agents by Grade
In July 2000, 2001, 2002, and 2003

Grade	2000	2001	2002	2003
00*	0	1	1	1
15	20	18	21	20
14	14	13	12	17
13	108	120	135	128
12	15	11	8	3
11	11	4	2	5
09	4	2	5	25
07	0	2	26	3
05	<u>1</u>	<u>0</u>	<u>1</u>	<u>1</u>
Total	<u>173</u>	<u>171</u>	<u>211</u>	<u>203</u>

* Grade 00 is in the senior executive service.

Issue 5

Criminal Investigation Division Cases

5. Recent news reports suggest that CID is using a loose definition of "case" and "investigation," and is including anti-terrorism and drug prevention activities in its enforcement figures. Within this division:

- a. Please identify and describe how CID categorizes, records, logs and tracks cases and investigations and whether these categorizations have changed since FY 2000. Please provide a summary of the categories and number of cases and investigations CID initiated, completed, and opened in FY 2000, 2001, 2002, and, if possible, in FY 2003, and the amount of any backlog.
- b. Please provide a summary and description of CID's enforcement results for each of the last three complete fiscal years and FY 2003 thus far, i.e. how many notices of violation have been issued, pollution reductions, fines and penalties, and prison sentences, by case type, i.e. counter-terrorism, drug enforcement, air, water, solid waste pollution reduction, etc. In the case of final actions that will reduce future air emissions, please describe the amount of annual emissions avoided and the year in which such reductions will commence.

Types of Criminal Cases

CID provided its staff with guidance on when to open a case, and a management system to track cases by various categories. Two categories of cases have been added to capture the additional duties assumed by the enforcement program after September 11, 2001: counter-terrorism and the protection detail for the Administrator. The counter-terrorism cases are reported in OECA's enforcement figures. In OECA press releases on the results of criminal cases in FY 2002, OECA sometimes (but not always) added a footnote identifying how many of the criminal cases opened during the year were related to counter-terrorism. CID does not have a category for drug cases; their involvement in such cases is based on a violation of an environmental law. For example, an illegal methamphetamine laboratory may violate requirements of the Resource Conservation and Recovery Act since such a laboratory often produces significant amounts of hazardous waste.

When CID opens a new case, the staff records information about it in a system called Criminal Docket. For each case, one or more media codes are associated with the case. These media codes are roughly equivalent to the environmental law under which the case is being pursued. For example, there is a media code related to the solid waste (or hazardous waste) program under the Resource Conservation and Recovery Act. There is also a code for violations of Title 18 of the U.S. Code, i.e., general criminal violations such as false statements or conspiracy. This is the code used to record counter-terrorism cases. A single case may have more than one media code associated with it. The Special Agents try to determine whether the criminal actions extended beyond a single environmental law. Consequently, OECA does not usually report case

information by media externally in its end-of-year reporting, although CID does track cases by media internally. When such information is needed by media, CID categorize the cases using the first media code listed. Table 5.1 identifies the media codes and summarizes the number of criminal cases opened in recent years.

**Table 5.1
Cases Initiated by Media In Fiscal 2000-2003**

Media Description	2000	2001	2002	2003 *
Air	91	108	77	69
Superfund	11	15	11	5
Emergency Planning and Community Right to Know Act	2	2	2	0
Pesticides	6	17	15	15
Other	5	7	3	5
Solid Waste	135	108	107	88
Toxics	7	9	17	12
Title 18 Violation	36	46	198	53
Water/Wetlands	170	159	227	123
Safe Drinking Water	3	5	12	8
404 (Wetlands)	11	6	5	1
Total	<u>477</u>	<u>482</u>	<u>674</u>	<u>379</u>

* Through June 2003

When counting the number of criminal cases opened in 2002, which was one of the performance measures under OECA's annual performance goal 59, the counter-terrorism cases were included in the 674 claimed. In some of the reports, the number of counter-terrorism cases were noted separately. For example, they were separately identified in OECA's 2002 annual performance report and in the narrative of EPA's 2002 annual performance report, but not in the statistical part of EPA's 2002 annual performance report. OECA was able to identify which of the Title 18 cases related to counter-terrorism because these cases were assigned an administrative code in addition to the media code.

Enforcement Results

Table 5.2 summarizes by media the criminal cases closed in FY 2000-2002 and through June 2003 for FY 2003. The results of the completed criminal cases fall into two types: punishments imposed by the court, and pollutant reduction information. (Notices of violation are related to a civil enforcement action, not a criminal case.) The punishments include jail sentences, probation, fines, and restitution. If a jail sentence or probation for different charges are concurrent, OECA reports the greater jail time, and, if they are consecutive sentences, OECA

totals the years. Tables 5.3 and 5.4 summarize the results of criminal cases closed in FY 2000-2002 and through June 2003 for FY 2003. These results are shown by the primary media code for the case.

**Table 5.2
Criminal Cases Closed In Fiscal 2000-2003**

Media Description	2000	2001	2002	2003 *
Air	89	75	73	68
Superfund	22	12	19	5
Emergency Planning and Community Right to Know Act	0	3	1	0
Pesticides	16	10	11	9
Other	3	4	6	6
Solid Waste	111	119	119	87
Toxics	7	8	11	6
Title 18 Violation	31	19	131	61
Water/Wetlands	159	146	173	132
Safe Drinking Water	7	4	7	8
404 (Wetlands)	7	7	5	2
Total	<u>452</u>	<u>407</u>	<u>556</u>	<u>384</u>

* Through June 2003

**Table 5.3
Years of Incarceration Imposed
For Cases Closed In Fiscal 2000-2003**

Media Description	2000	2001	2002	2003 *
Air	22.7	33.5	52.8	36.8
Superfund	1.2	115.8	3.4	0.0
Emergency Planning and Community Right to Know Act	0.0	1.5	0.0	0.0
Pesticides	0.3	0.5	0.0	1.1
Other	0.5	9.0	1.6	0.0
Solid Waste	71.5	42.4	85.7	38.8
Toxics	2.3	3.0	9.3	3.0
Title 18 Violation	4.5	2.6	6.1	9.0
Water/Wetlands	35.3	44.0	51.8	44.0
Safe Drinking Water	7.6	0.0	4.0	1.3
404 (Wetlands)	0.3	3.6	0.5	11.5
Total	<u>146.2</u>	<u>256.0</u>	<u>215.2</u>	<u>145.3</u>

* Through June 2003

In some cases, columns may not add up due to rounding.

**Table 5.4
Fines and Restitution Assessed
For Cases Closed in Fiscal 2000-2003**

Media Description	2000	2001	2002	2003*
Air	\$5,714,318	\$25,315,683	\$7,162,382	\$35,876,963
Superfund	70,400	16,742,004	3,054,294	28,000
Emergency Planning and Community Right to Know Act	0	15,000	0	0
Pesticides	583,745	128,505	120,100	26,932
Other	3,757,500	8,298,637	356,700	0
Solid Waste	38,509,153	1,611,479	2,569,531	1,444,894
Toxics	1,492,084	357,336	280,000	3,100
Title 18 Violations	2,276,399	4,033,036	18,771,955	5,348,580
Water/Wetlands	39,730,733	37,937,841	29,865,606	21,725,084
Safe Drinking Water	29,840,156	8,000	8,750	7,934
404 (Wetlands)	0	278,762	63,000	122,100
Total	<u>\$121,974,488</u>	<u>\$94,726,283</u>	<u>\$62,252,318</u>	<u>\$64,583,587</u>

* Through June 2003

When reporting the results related to a case, CID includes all the punishments imposed by the court, even if the conviction was not related to one of the environmental statutes. CID reports convictions that are not environmentally related as an accomplishment because CID opened the case based on a potential violation of an environmental statute. However, the Department of Justice decides what charges will be filed. For example, according to one Special Agent-in-Charge, the Drug Enforcement Agency is usually the lead on drug enforcement cases. However, if a decision is made not to pursue the drug charges, the defendant could be charged with an environmental crime. The sentences related to environmental crimes are usually smaller. Further, the Special Agent-in-Charge said that when the prosecutor and the defendant plea bargain, environmental penalties may be eliminated.

CID believes that it is appropriate to include “non-environmental” statute fines and penalties (e.g., drug counts, false reporting, witness tampering, mail fraud, conspiracy) when they are integral elements of a criminal environmental prosecution. According to CID staff, inclusion of these relevant “non-environmental” sanctions has been standard procedure over the history of the EPA criminal enforcement program, as well as being accepted practice across the Federal law enforcement establishment. According to an OCEFT official, CID has been involved in at least 10 drug-related cases that were closed in 2000 through 2003 to date. These cases resulted in \$2,000 in fines, 1,934 months of incarceration, and 300 months of probation.

Although CID has reported the results of its cases in terms of court-ordered punishments for several years, measuring pollutant reductions related to criminal cases is recent. The pollution reduction amounts are generally limited to the pollution released that is the basis for the case,

and normally does not include estimates of future release that are avoided because of the case. Future reductions are measured under the civil enforcement program. However, there can be “future” pollutant reductions in individual criminal cases (e.g., if CID investigates a chlorofluorocarbon smuggling operation and its illegal inventory is confiscated before it can be sold). CID recently completed its quality assurance review of the pollutant reduction information for cases closed in FY 2002. They found pollutants were reduced by 20.5 million pounds. Although CID has figures on pollutant reductions for 2000 and 2001, the quality of the figures was uncertain and the figures were not included in the annual performance reports.

Issue 6

Criminal Investigation Division Management

6. Please describe the management, reporting and accountability structure at CID. Identify any perceived gaps, shortcomings or strengths in meeting performance goals and fulfilling the division's mission.

There are policies in place governing the work performed by CID, and some management information systems and measures to track the work and report results. However, it appears that the management systems for tracking leads, time, results, and training need improvement. Within the organization there is concern about leadership, communication, and resources. Due to time constraints, we were unable to confirm the issues brought to our attention in interviews. Despite management problems, CID is carrying out its mission to investigate criminal violations of the environmental statutes.

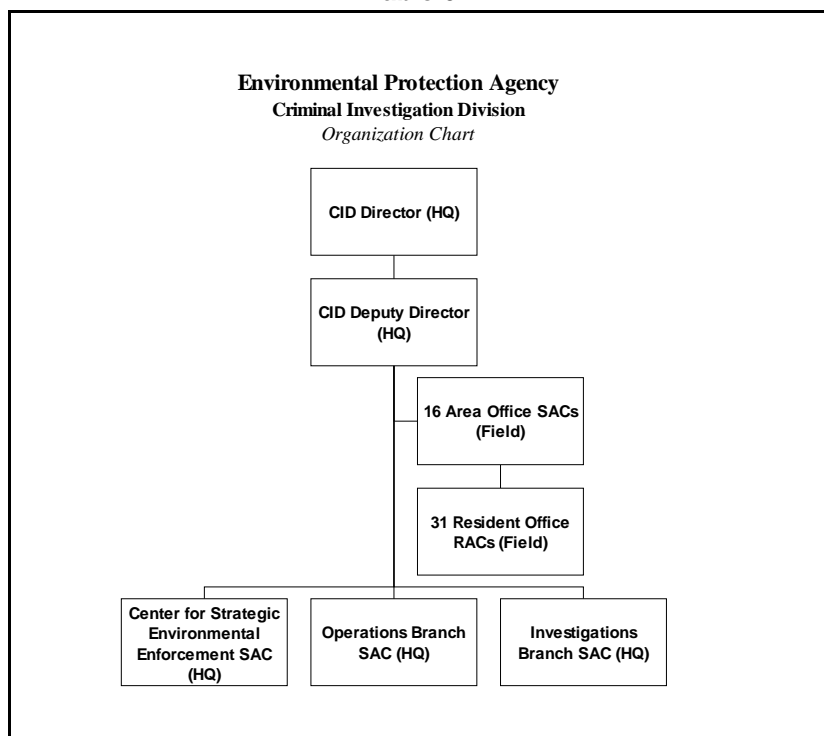
Management

CID is headed by a Director. CID's Deputy Director position has been vacant since 2000, although two individuals have intermittently served as the acting Deputy Director. The CID Director reports to the OCEFT Director, who in turn (as required by the Pollution Prosecution Act of 1990) reports to the Assistant Administrator for Enforcement and Compliance Assurance. The OCEFT Director formally meets with his division directors once a week. Similarly, the OCEFT Director meets periodically with the Assistant Administrator.

As shown in Table 6.1, CID has three branches, each headed by a Special Agent-in-Charge (SAC) who reports to the CID Deputy Director. The three branches are the: Investigations Branch, Operations Branch, and the Center for Strategic Environmental Enforcement. Not all of the staff in these organizations are physically located at Headquarters. There are 16 area offices, each headed by a SAC who reports to the CID Deputy Director. There is also an assistant SAC for most area offices. Most of the area offices have one or more resident offices at other locations. Most resident offices are headed by a Resident Agent-in-Charge, who reports to the SAC of the area office. A few of these resident offices have only one person. Between the area offices and resident offices, CID has Special Agents at 47 locations around the United States.

According to CID staff, there is frequent formal and informal communication between the area office SACs and the CID Headquarters staff. The CID Director and the SACs have biweekly conference calls to discuss operations. In addition, each week the area office SACs send the CID Headquarters staff a written report on work during the past week as well as work planned for the week ahead, updates on significant cases, and information on indictments. Resources permitting, CID tries to bring all the SACs together for a meeting at least once a year. The most recent meetings were in December 2001, May 2002, and October 2002; a meeting scheduled for April 2003 was canceled because funding was not available. The agenda for the October 2002

Table 6.1



meeting included such topics as: the Equal Employment Opportunity process; integrating the civil and criminal programs; the protective service detail; the criminal enforcement mission; a historical perspective on terrorism and a threat analysis for today; and homeland security initiatives.

Four of the five area office SACs we interviewed told us they were concerned about communication, resource, or leadership issues. Their specific concerns varied. For example, one said that staff in the field are not given the opportunity to provide input on management decisions, such as which of the agents will be assigned to the National Counter-Terrorism Evidence Response Team, an assignment which requires additional training. OCEFT established an Executive Advisory Committee in April 2003 to increase communication between management and employees. The OCEFT Executive Advisory Committee replaced several previous advisory committees. The previous committees had not met since at least August 2001, when the prior OCEFT director decided to merge them into one group so there would be less duplication. Thus, during the period when homeland security and protective detail responsibilities were added to the duties of CID (and OCEFT) staff, the advisory committees were not available as a formal way for employees to share concerns with management.

All five area office SACs with whom we spoke said agents needed better or additional equipment. For example, four mentioned modern computers; one said agents are using Pentium 1 model computers, and another said their computers were donated to them. Other

equipment needs identified ranged from digital radios and a secure data network, to flashing lights and emergency equipment in their cars.

One SAC believed priorities for using resources should be changed; e.g., CID invested in a computer forensics office when some agents still needed basic equipment. Two SACs said more administrative support was needed in the field, so agents would spend less time doing clerical work. As discussed under Issue 2, OCEFT has brought such needs to the attention of the Assistant Administrator.

The CID Director also identified leadership problems. He said some of the problems were because top management did not appreciate the efforts of the criminal enforcement program. For this reason and because of other management issues, he recently left EPA.

Strategic Planning and Results Measurement

OCEFT prepared a strategic plan with a mission statement containing two items that pertained to the activities of CID: (1) conducting criminal investigations of violations that pose significant threats to human health and the environment, and referring those cases for criminal prosecution; and (2) providing investigative support for homeland security. This strategic plan identified goals and, for each goal, significant activities and performance measures. The performance measures included:

- Number of criminal investigations.
- Percent of criminal cases with actual or potential harm to public health and/or the environment and/or culpable conduct.
- Aggregate numbers of criminal referrals to the Department of Justice, level of prison sentences, and level of criminal fines and restitution.
- Number of criminal cases resulting in compliance change and environmental improvement (e.g., industrial process changes, removal, remediation or restoration, improved record keeping, initiation of audits or environmental management systems).
- Aggregate amounts of pollution reduced or curtailed as a result of criminal prosecutions.
- OCEFT will respond to 100% of the following activities:
 - Homeland security investigative leads that relate to the environment, including chemical or biological incidents;
 - Federal Bureau of Investigation requests for investigative, forensic or technical support; and
 - Participation in all National Security Special Events identified by the Office of Homeland Security as requested by the Secret Service.

Two of the above performance measures were included in EPA's Goal 9 annual performance goals for fiscal 2002: the number of criminal cases, and support for homeland security. For FY 2002, both goals were met. (FY 2002 was the first year support for homeland security was measured.) Number of criminal cases initiated is summarized in Table 6.2.

As noted in Issue 5, CID has started measuring pollution reductions so they can be reported in the future. Finally, according to OCEFT staff, CID is developing an additional measure that quantifies recidivism, which is a way to measure deterrence. They plan to establish the baseline this year and apply it in 2004.

**Table 6.2
Number of Criminal Cases Initiated**

FY	Planned	Actual	Met?
2000	500	477	No
2001	450	482	Yes
2002	400	674	Yes
2003	400		

Although CID tracks and reports output measures, it does not link these outputs/activities to long-term environmentally related outcome goals. Thus, OECA does not have complete information on the results achieved to compare with the resources invested that it can use to make decisions about future budget requests. See Issue 7 for additional discussion of measures.

Information Systems

CID relies on two automated management information systems to track and report on cases: the Criminal Docket mentioned under Issue 5, and the Case Conclusion Database. CID enters information about criminal cases into Criminal Docket at case initiation, and investigation and prosecution information is tracked in it until case conclusion. A new case management, tracking, and reporting system (Case Reporting System) is being developed to replace Criminal Docket. It is expected to be a more user-friendly database with greater tracking, management, and reporting capabilities. Using its own version of guidance developed by the Office of Regulatory Enforcement, CID Special Agents prepare a “Case Conclusion Report” after the conclusion of a criminal case. Information from the “Case Conclusion Report”, including an estimate of the amount of pollution reduced, is entered into an automated system.

In addition, OCEFT has a formal time-tracking system called Employee Monthly Activity Report. Agents record the number of hours spent on each case and summarize the time by media. The summary information is then input into a database by OCEFT administrative staff, so it can be used to allocate payroll costs by appropriation. The CID Director said that the Employee Monthly Activity Report “... is inadequate. We can’t track or tell you the time (costs) per case. Again, we need resources to fix this million-plus issue too.”

Human Resources

The policies related to personnel and other administrative matters generally come from OCEFT, rather than CID. Since June 1999, OCEFT has identified courses to achieve the knowledge, skills, and abilities needed to meet the requirements of the Pollution Prosecution Act of 1990. There are different curricula for Special Agents at beginning, intermediate, and advanced levels. For example, the first two basic courses are: a 9-week course that provides newly hired 1811 Special Agents the knowledge and skills needed to perform the duties of a Federal Criminal Investigator; and a 7-week course that provides the knowledge, skills, and abilities that Special

Agents require for investigating criminal violations of environmental statutes. At the intermediate level, the curriculum includes (among other courses) Special Agent in-service training, which is a 5-day course that updates the Special Agent on legal, technical, and policy issues applicable to investigating criminal violations of environmental laws. This course used to be annual training, but (according to the CID Director) “it has been cut back due to lack of resources.”

Although EPA generally uses “Individual Development Plans” to help employees identify ways to improve current job performance, as well as meet long-term career goals, CID does not use “Individual Development Plans” for their employees. According to the CID Director, “OECA never had the funds to make them real.” We were told that CID manually tracks training completed by its staff, and OCEFT’s National Environmental Training Institute monitors which agents are completing mandatory training at the Federal Law Enforcement Training Center. “Individual Development Plans,” especially for new Special Agents, would be useful for ensuring that the training requirements are being met. OCEFT plans to establish a tracking system for training. In addition, there is a formal on-the-job training program for new agents. Under this program, the Special Agent mentoring the new agent submits an on-the-job evaluation to the area office SAC.

The *Special Agents Manual* guides the CID Special Agents in the investigative process. This Manual, which comes from OCEFT, is dated September 1998. It covers everything from investigative reports to the use of force, and includes various checklists. We believe the *Special Agents Manual* is generally adequate but needs to be updated. In addition, there is a separate manual for the protective service detail. Agents are also provided a manual from the Department of Justice on environmental crime. To supplement these manuals, the CID Director issues policy statements as needed.

Every employee has a performance agreement that is discussed with his or her manager. The standard agreement for a Resident Agent-in-Charge includes sections on: Case Management, Investigation & Related Communication; Knowledge of Manuals, Laws, Regulations and Procedures; Sources of Information & Liaisons; Professional Attributes; and Special Projects. In addition, according to the CID Acting Deputy Director, CID tries to recognize agents’ work with awards, which start with a nomination from the area office SAC. The Acting Deputy Director believes the agents are the strength of the organization, citing their ability in FY 2002 to continue working on environmental cases even though other duties were added to their workload.

CID is undergoing a workforce analysis to evaluate the effort and location of its staff. In addition, at the request of the Assistant Administrator, a separate review of OCEFT is being done by an EPA manager from outside OECA. The report on this review is expected in November 2003.

Issue 7

Enforcement Effectiveness

7. Describe the effectiveness of EPA's enforcement policies in terms of: prioritization of repeat/significant offenders, prioritization of violations with significant impacts, and effectiveness of deterrence.

During recent years, OIG issued several reports on EPA's enforcement programs and identified issues that prevent the Agency from achieving and evaluating environmental results related to its enforcement program. Below we have summarized some of the significant issues identified from our work, as well as the OMB Program Assessment Rating Tool analysis and an OECA internal review. Our audits focused primarily on program effectiveness and compliance with applicable laws. Our multi-year plan for FY 2003-2005 contains work that will evaluate the effectiveness of EPA's processes for establishing enforcement priorities and measuring the effectiveness of its enforcement activities. To respond to this request for information on EPA's prioritization of repeat/significant offenders, prioritization of violations with significant impacts, and effectiveness of deterrence, we spoke with representatives from OECA to gather an understanding of their processes.

Criminal Enforcement Priorities and Effectiveness

The priorities and measures of the criminal enforcement program were addressed under Issues 3, 5 and 6. To summarize, criminal cases are opened based on criteria in the investigative discretion policy: environmental harm and culpable conduct. In addition, the Special Agents consider the priorities and concerns of the EPA regional staff. However, they do not open a new case if they believe they do not have sufficient resources to handle it. CID measures several outputs and outcomes from its operations. For FY 2002, two outputs from the criminal program were part of EPA's annual performance measures: number of criminal cases initiated and support provided for homeland security. CID also measures pollution reductions and court-ordered punishments. Although CID tracks and reports output measures, it does not link these outputs to long-term environmentally-related outcomes. It is developing a measure to quantify recidivism, as one way to measure deterrence.

Civil Enforcement Priorities

The Office of Regulatory Enforcement in OECA works with States, EPA regional offices, tribes, and other Federal agencies to ensure compliance with the nation's environmental laws through facility inspections, civil enforcement actions, and compliance assistance and incentives. Because environmental laws are generally media specific, OECA has established enforcement policies by media. The various policies contain a special designation for facilities that commit the worst offenses. They are called significant non-compliers, except for the air program, which calls them high priority violators. The exact criteria for significant non-compliers vary with each statute. For example, under the Resource Conservation and Recovery

Act, operating a treatment, storage, or disposal facility without a permit classifies the facility as a significant non-complier. The enforcement policies usually require specific enforcement actions when a significant non-complier is involved.

Within the framework of these enforcement policies, the Office of Regulatory Enforcement, together with OECA's Office of Compliance and the EPA regions, establish national enforcement and compliance priorities. These priorities are documented in agreements with the regional offices, which are based on guidance provided by the Office of Compliance. For FY 2002 and 2003, the national priorities were:

- Clean Water Act – Wet Weather
- Safe Drinking Water Act – Microbial Rules
- Clean Air Act – New Source Review/Prevention of Significant Deterioration
- Clean Air Act – Air Toxics
- Resource Conservation and Recovery Act – Permit Evaders
- Clean Air Act – Petroleum Refinery Sector

According to OECA officials, they have several methods to establish priorities. For example, OECA has begun to conduct performance analyses of individual programs and program components. The analyses are designed to provide senior managers with information from EPA's data systems that will help them better manage their programs, and to focus limited resources on the programs where the potential for environmental impact is most significant. In February 2003, an analysis of major facilities with permits under the National Pollutant Discharge Elimination System (NPDES) was issued. This analysis, *A Pilot for Performance Analysis of Selected Components of the National Enforcement and Compliance Assurance Program*, concluded that "enforcement activity in the NPDES program (EPA and state informal, and EPA formal actions) has been declining." The decline is further discussed in Issue 8. Regarding effectiveness, the report noted that:

Data for EPA and the states for FY 1999-2001 show that a low percentage (9% -13%) of enforcement actions are taken timely and appropriately, only 39% -40% of formal actions result in penalties, penalties are low (about \$5,000 per action), and escalation may not be occurring. EPA can not impose penalties on federal facilities where the SNC (significant non-compliers) rates are highest. Likelihood of inspections is high but decreased 8 percentage points in 3 years.

The analysis produced 13 recommendations for improving the enforcement and compliance assurance program related to NPDES major facilities. According to staff in the Office of Compliance, some of the recommendations are already completed and others are underway.

One of the recommendations from the February 2003 analysis was to establish a Facility Watch List. It will be a key effort to address significant non-compliance at the facility level, because it identifies facilities that have been in significant non-compliance for lengthy periods with no apparent formal enforcement response from EPA or the authorized State. EPA expects that increased management attention on potentially serious violators that have not received

enforcement attention will ensure that these violations are properly addressed, and will significantly reduce the number of facilities that do not receive appropriate action under the Clean Air Act, Clean Water Act, or Resource Conservation and Recovery Act.

OECA provided our office with other examples of on-going targeting mechanisms used for examining patterns of non-compliance and prioritizing repeat/significant offenders. We have listed these initiatives below. However, we did not evaluate the veracity of these efforts. The Agency stated it:

- Developed a new internal web interface called OTIS - Management Reports. The web interface allows staff and managers to quickly determine State or regional compliance and enforcement trends. This new interface also allows EPA and the States to easily spot changes in inspection patterns, non-compliance, and enforcement actions.
- Compared reported releases of hazardous air pollutants to Clean Air Act Title V permit applications. This effort is beginning to identify facilities that are not operating with the required Clean Air Act permit.
- Used the National Response Center database to evaluate companies with the most frequent spills to waters of the United States. This information has been used to develop enforcement cases, particularly within the pipeline industry. This targeting information was instrumental in a recently concluded Clean Water Act case that carried a \$34 million assessed penalty.

Civil Enforcement Effectiveness

OECA had some performance measures for FY 2002 related to the effectiveness of the civil enforcement program. Five of these measures, which were part of annual performance goal 58, “Non-Compliance Reduction,” are summarized in Table 7.1. For example, one of the measures was to develop statistically valid compliance rates for five new populations. The Agency plans to use these analyses of compliance trends to determine where the most significant environmental problems are, and where best to focus its resources.

**Table 7.1
Performance Measures Under Annual Performance Goal 58 for FY 2002 ***

Measure	Planned	Actual	Met?
Concluded enforcement actions requiring physical action that result in pollutant reductions and/or changes in facility management or information practices.	75%	77%	Yes
Millions of pounds of pollutants required to be reduced through enforcement actions settled this fiscal year.	300 M	261 M	No
Develop and use valid compliance rates or other indicators of compliance for selected populations.	5 populations	5 populations	Yes
Reduce the overall level of significant non-compliance recidivism among Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act programs from FY 2000 levels.	2% decrease	1.6% increase	No
Increase over FY 2000 levels the proportion of significant non-complier facilities under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act that returned to compliance in less than 2 years.	2% increase	3.8% decrease	No

* Data for fiscal 2003 will be available in November 2003.

Besides annual performance goal 58, OECA identified several other annual performance goals related to Goal 9. Table 7.2 shows the 2002 goals. OECA reported that all of these goals were met.

**Table 7.2
Other Annual Performance Goals Related to Goal 9**

<p>Annual Performance Goal 59: INSPECTIONS/INVESTIGATIONS: EPA will conduct inspections, criminal investigations, and civil investigations targeted to areas that pose risks to human health or the environment, display patterns of non-compliance, or include disproportionately exposed populations.</p>
<p>Annual Performance Goal 60: CAPACITY BUILDING: Improve capacity of States, localities, and tribes to conduct enforcement and compliance assurance programs. EPA will provide training, as well as assistance with State and tribal inspections, to build capacity, including implementation of the inspector credentials program for tribal law enforcement personnel.</p>
<p>Annual Performance Goal 61: QUALITY ASSURANCE: Maintain and improve quality and accuracy of EPA's enforcement and compliance data to identify non-compliance and focus on human health and environmental problems.</p>
<p>Annual Performance Goal 62: INTERNATIONAL ENFORCEMENT: Ensure compliance with legal requirements for proper handling of hazardous waste imports and exports.</p>
<p>Annual Performance Goal 63: HOMELAND SECURITY: EPA will provide direct investigative, forensic, and technical support to the Office of Homeland Defense, Federal Bureau of Investigation, and/or other Federal, State, and local law enforcement agencies to help detect and prevent, or respond to terrorist-related environmental, biological, or chemical incidents.</p>
<p>Annual Performance Goal 64: COMPLIANCE INCENTIVES: Increase opportunities through new targeted sector initiatives for industries to voluntarily self-disclose and correct violations on a corporate-wide basis.</p>
<p>Annual Performance Goal 65: ENVIRONMENTAL MANAGEMENT SYSTEMS: Promote the use of environmental management systems to address known compliance and performance problems.</p>

Program Assessment Rating Tool Analysis of Civil and Criminal Enforcement

OMB instituted the Program Assessment Rating Tool to help integrate budgeting with performance management, and to evaluate the effectiveness of Federal programs. Both EPA's civil and criminal enforcement programs were subjected to the OMB Program Assessment Rating Tool analysis in 2003 for the FY 2005 budget. The civil enforcement program was also reviewed in 2002; the results of the 2002 assessment are described below. OMB's Program Assessment Rating Tool evaluation of civil enforcement found that the program:

... lacks adequate outcome oriented performance measures. This impacts both program planning and results. With better outcome performance measures, program planning could be adjusted to achieve more effective results.

A second finding reiterated other evaluations that had reported concerns about data collection and management, including “... lack of adequate workload analysis to support existing staffing and priorities and b) the lack of good quality data to accurately determine compliance and monitor the effectiveness of enforcement activities.” OMB’s final rating regarding EPA’s civil enforcement program was “Results not demonstrated.”

OECA disagreed with the OMB position emphasizing only health-related outcomes. According to OECA, OMB’s failure to recognize other outcomes ignores the management value of goals based on intermediate outcomes, runs counter to General Accounting Office guidance and years of performance measurement practice all across Federal and State government, and contradicts the views of performance measurement experts serving on OMB’s own Performance Measurement Advisory Council.

Draft comments from OMB on the results of the 2003 Program Assessment Rating Tool on criminal enforcement were that:

... the criminal enforcement program lacks appropriate or sufficient number of long term outcome performance measures...it is the inadequacy of long term measures that also invalidate the criminal program’s existing targets, time frames, and annual measures...therefore OCEFT did not demonstrate the results of its program.

According to an OCEFT official, the type of information about the criminal enforcement program that would satisfy OMB cannot be measured. As an example, he described the difficulties in measuring how much criminal enforcement deters violating the laws. OECA believes that the criminal enforcement program’s pollutant reduction measure and forthcoming recidivism measure are relevant environmental outcome measures that accurately reflect how the criminal enforcement program works.

Prior OIG Reports

Our March 2001 Report 2001-P-00006, *Compliance with Enforcement Instruments*, disclosed that regional offices did not always adequately monitor compliance with enforcement instruments, nor did they always consider further enforcement actions. Ineffective monitoring was due primarily to the lack of (1) guidance detailing how or when to monitor enforcement instruments and (2) emphasis OECA placed on monitoring. Ineffective monitoring may have contributed to the regions not considering further enforcement actions for non-compliance with enforcement instruments. Consequently, there was a risk that violations continued and contributed to environmental harm or increased health risks and EPA’s effectiveness through deterrence was adversely impacted. For example, we found instances where EPA had no evidence that significant violations had been corrected. Some corrective actions were being made when the report was issued. Since then, OECA has provided guidance to EPA regions on tracking compliance with enforcement instruments and reporting the results. As of September 23, 2003, OECA was still in the process of establishing a performance measure to ensure that facilities under a formal enforcement action return to compliance.

Additionally, our reports have identified other problems that prevented EPA from accurately measuring environmental impact. For example:

- Our January 2002 report 2002-P-00004, *Unreliable Data Affects Usability of DOCKET Information*, found significant amounts of incomplete pollutant information within the national DOCKET system. According to OECA, the quality and completeness of data for pollutant reductions has been improving. Regional offices are required to certify that their pollutant reduction data are complete and follow the methodology.
- Our May 2003 report 2003-M-00014, *EPA Should Take Further Steps to Address Funding Shortfalls and Time Slippages in Permit Compliance System Modernization Effort*, identified funding shortages and implementation delays affecting the successful modernization of this key information system. OECA's February 2003 analysis found that States are currently not required to enter penalty data into the Permit Compliance System, which limits the usefulness of the system for drawing conclusions about the effects of penalties on compliance and deterrence. This system is discussed further under Issue 8.

Adequate information systems remain an issue for EPA. In a May 2003 status report, EPA identified key management challenges confronting the Agency. While EPA has made continued progress on most challenges, the list identified the same management challenges reported in 2002, including three related to information systems that had been identified by OIG: (1) linking mission and management; (2) information resources management and data quality; and (3) EPA's information systems security.

Issue 8

Water Enforcement

8. Provide an analysis of the effectiveness of the Permit Compliance System (PCS) data system used by the water enforcement division and the adequacy of EPA's support of efforts to upgrade the system. Further identify why both the EPA's and the States' formal enforcement actions have declined so significantly since FY 1999, with the EPA's declining further than that of the States'. Evaluate the legitimacy of the EPA's claim that this reduction is due to a diversion of resources to wet weather discharge enforcement actions. Quantify any diversion in terms of FTEs.

Among other things, the Permit Compliance System (PCS) tracks formal enforcement actions under the Clean Water Act. According to a recent analysis by OECA, such actions have declined in recent years. According to OECA staff, the decline is due to the shift in national priorities to wet weather discharges. We were unable to confirm the effect of the shift on formal enforcement actions. However, we are providing information on enforcement actions related to wet weather discharges. These discharges are not tracked by PCS, which is one reason EPA plans to replace it. Development of the replacement system is taking longer than originally planned.

Permit Compliance System

EPA uses PCS to support the NPDES program. PCS tracks NPDES permit issuance, permit limits, self-monitoring data, and enforcement and inspection activity for more than 64,000 facilities regulated under the Clean Water Act. PCS has been identified as an Agency weakness since 1999. Reasons include its reported unreliability due to missing data and data quality problems. Moreover, compliance data are not captured for hundreds of thousands of smaller dischargers, or for new categories of discharges for storm water, pretreatment, and concentrated animal feeding operations. As of October 8, 2003, EPA extended the completion date for correcting the PCS Agency weakness to FY 2006 due to funding shortfalls and extensive and time-consuming stakeholder input and review process.

The effort to modernize PCS started in 1997 and is in the detailed design phase. In May 2003, we reported in Report 2003-M-00014 that, after several delays, implementation of the modernized PCS was planned for the end of FY 2005. In his June 30, 2003, response to the report, the OECA Assistant Administrator identified four reasons for these delays:

- Adequate funding was not available within the timeframes needed.
- OECA was establishing the core database and web-based interface to provide activity tracking (e.g., inspections, enforcement actions) and management analysis capabilities for headquarters and regional elements of the Federal enforcement and compliance program.

- They were required to change contractors between the system requirement and system design phases.
- More time was needed to get input from everyone using the system.

With regard to funding, the OECA Assistant Administrator indicated they would be developing a plan to fully fund the modernization effort. An additional \$5 million for PCS was included in the President's 2004 budget request.

Formal Enforcement Actions vs. Wet Weather Discharge Actions

OECA staff analyzed formal enforcement actions related to NPDES major facilities. Their February 2003 report showed that between 1999 and 2001 there was an overall decrease in total EPA and State formal actions of 11 percent, with a 9-percent increase for States and a 45-percent decrease for EPA. The number of formal actions is shown in Table 8.1. According to OECA staff, the decline was due to the shift in national priorities to wet weather discharges. Based on States' 305b reports on impaired waterways, EPA concluded in about 1990 that wet weather discharges were very harmful and had to be addressed. Wet weather discharges are storm water discharges, or overflows from combined sewers, sanitary sewers, or concentrated animal feeding operations. According to OECA, since 1995, 174 Federal enforcement actions to address overflows from combined sewers or sanitary sewers were completed (see Table 8.2) and 27 are ongoing. Since 1997, 178 Federal enforcement actions were filed to address overflows from concentrated animal feeding operations (see Table 8.3).

**Table 8.1
Number of Formal NPDES
Enforcement Actions**

FY	State	EPA	Total
1999	410	235	645
2000	527	162	689
2001	447	130	577

**Table 8.2
Civil Administrative and Judicial Orders
Issued Since 1995 Concerning Overflows of
Sanitary Sewers or Combined Sewers**

FY	Concluded Actions
1995	3
1996	12
1997	15
1998	11
1999	15
2000	11
2001	21
2002	51
2003 *	35
Total	<u>174</u>

* Not final figures

**Table 8.3
EPA Clean Water Act Enforcement Actions
Filed Since 1997 Against
Owners or Operators of
Concentrated Animal Feeding Operations**

FY	Number Filed
1997	14
1998	43
1999	40
2000	44
2001	18
2002	4
2003 *	15
Total	<u>178</u>

* Not final figures

Work related to these actions preceded the date the actions were filed. Further, in some cases, work continued after the actions were concluded. Data was not readily available on the number of storm water Federal enforcement actions before FY 2003 because until June 2002 the EPA Regions were not required to report data by priority area. According to OECA, the preliminary data shows 239 final administrative orders related to storm water were issued during FY 2003.

According to OECA staff, it takes more resources to pursue a wet weather discharge action than a NPDES formal action because:

- Finding the discharge and tying it to the discharger can be difficult. For example, a construction project may be a temporary situation, or a municipality may not have discharge points documented on its drawings.
- EPA must prove the water was harmed by the discharge, which may take extensive laboratory work or section 308 requests for information.
- Most of the defendants are municipalities, who generally have little money.
- The fix (injunctive relief) may be expensive and long-term.

On the other hand, a NPDES case is often based on self reporting. The violation is clear as it is based on the facility's own tests and the terms of its permit. In addition, the fix is usually easier, and the defendant is usually not a municipality. Since information on the actual FTE used for wet weather cases is not kept, we were unable to evaluate the legitimacy of EPA's claim that formal enforcement actions declined due to a diversion of resources to wet weather discharge enforcement actions.

Scope and Methodology

The scope for this assignment was determined by a Congressional request asking the OIG to investigate management, funding, and staffing needs of EPA's OECA. We were asked to expedite the request so that the information we provided could be used to finalize EPA's FY 2004 budget. Our work consisted primarily of obtaining and analyzing information from EPA's management information systems and interviewing individuals involved in EPA's enforcement program, including Special Agents-in-Charge involved with EPA's criminal enforcement activities, and regional officials who are involved with EPA's civil enforcement actions. Due to time constraints, we were unable to verify the accuracy of the data obtained from EPA's systems.

Since the scope of our work consisted of gathering, providing, and explaining information requested by Congress, not audit or evaluation services, we did not conduct our work in accordance with all *Government Auditing Standards* issued by the Comptroller General of the United States. Specifically, we did not: evaluate management controls; determine compliance with laws and regulations; follow up on prior audit work; or test the evidence collected, including the data.

Our work included limited reviews of EPA policies, operating plans, reports, and other documents relative to enforcement and enforcement personnel. We also reviewed three Presidential Decision Directives on terrorism and protecting infrastructure; the Homeland Security Presidential Directive 5; and EPA and the President's budget requests for enforcement for FY 2000-2004, as well as the related enacted budgets and operating plans. We obtained data on enforcement program costs, FTEs, and cases from EPA systems. We relied on data from EPA's Budget Automation System, Integrated Financial Management System, and Criminal Docket. CID enforcement results are recorded in Criminal Docket. Due to the short timeframe to complete the work, we did not review supporting documentation for data in the systems and did not verify the accuracy of the data.

We also relied on information relative to criminal and civil enforcement obtained from interviews with EPA Headquarters staff in OECA, including the Office of Compliance, Office of Regulatory Enforcement, and CID within OCEFT. In addition, we interviewed five Special Agents-in-Charge from five CID area offices.

OECA provided us a list of civil cases where EPA is the lead agency and, according to EPA policy, should have taken formal enforcement under the Clean Air Act or the Resource Conservation and Recovery Act. However, according to data in the systems, no formal enforcement has been taken for at least 2 years. Again due to time constraints, we were unable to review files and had to rely on interviews with EPA regional officials for information about the cases on the list. We interviewed officials in Regions 2 and 6 about the Clean Air Act enforcement cases and officials in Regions 5 and 7 about the Resource Conservation and

Recovery Act cases. Region 6 officials also provided information on civil enforcement in the Region's water and hazardous waste programs, homeland security, and civil enforcement in general. Region 7 also provided civil enforcement information from a general regional perspective in addition to Resource Conservation and Recovery Act enforcement information.

Prior OIG Coverage

- *EPA Should Take Further Steps to Address Funding Shortfalls and Time Slippages in Permit Compliance System Modernization Effort*, Report 2003-M-00014, May 20, 2003
- *Land Application of Biosolids*, Report 2002-S-00004, March 28, 2002.
- *Unreliable Data Affects Usability of DOCKET Information*, Report 2002-P-00004, January 18, 2002.
- *State Enforcement of Clean Water Act Dischargers Can Be More Effective*, Report 2001-P-00013, August 14, 2001.
- *Compliance with Enforcement Instruments*, Report 2001-P-00006, March 29, 2001.
- *Report of EPA's Oversight of State Stack Testing Programs*, Report 2000-P-00019, September 11, 2000.
- *EPA's Multimedia Enforcement Program*, Report 2000-P-000018, June 30, 2000.
- *Biosolids Management and Enforcement*, Report 2000-P-00010, March 20, 2000.
- *Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs*, Report E1GAE7-03-0045-8100244, September 25, 1998.

Tables for Issue 2

Table B.1

**Goal 9 Actual Costs (in thousands)
By Major Organization for FY 2000-2003**

Organization	2000	2001	2002	2003*
Region 1	\$15,798.9	\$17,442.0	\$16,830.1	\$13,585.9
Region 2	22,809.9	23,684.1	23,913.9	20,288.9
Region 3	23,258.6	24,030.8	23,924.6	21,294.0
Region 4	31,709.4	32,443.7	31,731.8	29,647.8
Region 5	35,842.1	38,779.8	39,035.3	33,942.2
Region 6	27,243.0	28,770.9	28,893.5	24,516.0
Region 7	15,388.8	15,395.2	15,707.7	14,764.2
Region 8	14,312.9	14,572.0	15,683.5	12,185.5
Region 9	23,200.0	24,241.4	25,436.9	19,855.4
Region 10	13,308.7	13,569.7	14,335.1	12,914.1
Office of Administration and Resources Management	38,868.8	42,489.5	33,452.1	351.2
Office of Chief Financial Officer	2,794.1	3,083.9	3,082.0	(62.0)
Office of General Counsel	(65.1)	1,331.0	833.9	899.6
Office of Enforcement and Compliance Assurance	106,290.5	111,518.5	126,530.4	114,455.4
Merged Appropriations Accounts	178.3	206.7	0.0	17.3
Totals	<u>\$370,939.0</u>	<u>\$391,559.1</u>	<u>\$399,391.1</u>	<u>\$318,655.5</u>

* 2003 amounts are as of August 28, 2003.

In some cases, columns may not add up due to rounding.

Table B.2**Goal 9 Actual FTE
by Major Office in FY 2000-2003**

Organization	2000	2001	2002	2003 *
Region 1	109.0	118.1	109.1	100.2
Region 2	174.4	168.8	169.6	153.2
Region 3	152.5	149.1	162.1	144.9
Region 4	210.3	236.5	227.4	195.8
Region 5	252.8	278.3	269.2	225.8
Region 6	208.7	230.2	216.6	196.7
Region 7	114.5	115.2	114.5	101.4
Region 8	104.4	2.5	102.7	92.7
Region 9	140.8	151.5	147.7	137.1
Region 10	107.0	115.8	113.6	97.8
Office of Administration and Resource Management	17.4	1.4	0.0	0.0
Office of Chief Financial Officer	14.6	0.0	0.0	0.0
Office of General Counsel	4.4	12.7	6.6	7.8
Office of Enforcement and Compliance Assurance	<u>703.2</u>	<u>724.5</u>	<u>756.9</u>	<u>722.9</u>
Totals	<u>2,313.9</u>	<u>2,304.6</u>	<u>2,396.1</u>	<u>2,176.3</u>

* 2003 amounts are as of August 29, 2003.

In some cases, columns may not add up due to rounding.

Table B.3

**Superfund Actual FTE in Goal 9
by Major Organization for FY 2000-2003**

<u>Organization</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003*</u>
Region 7	(0.1)	0.0	0.0	0.0
Office of Chief Financial Officer	0.6	0.0	0.0	0.0
Office of Enforcement and Compliance Assurance	<u>93.0</u>	<u>93.8</u>	<u>95.8</u>	<u>94.5</u>
Totals	<u>93.5</u>	<u>93.8</u>	<u>95.8</u>	<u>94.5</u>

* 2003 amounts are as of August 29, 2003.

Table B.4

OECA Actual FTE by Goal for FY 2000-2003

<u>Goal</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003*</u>
5	96.5	101.8	103.9	95.3
6	0.0	0.0	0.0	0.3
7	29.6	30.3	25.8	19.0
9	<u>703.2</u>	<u>724.5</u>	<u>756.9</u>	<u>722.9</u>
Totals	<u>829.3</u>	<u>856.6</u>	<u>886.6</u>	<u>837.5</u>

* 2003 amounts are as of August 29, 2003.

Table B.5

OECA Actual Costs by Office for FY 2000-2003

Description *	2000	2001	2002	2003 **
Immediate Office - Assistant Administrator for Enforcement and Compliance Assurance	\$308,817	\$3,689,582	\$4,266,548	(\$48,547)
Administration and Resource Management Support Staff	3,189,854	2,596,552	2,965,261	3,214,812
Assistant Administrator Enforcement - Immediate Office	3,156,368	3,241,164	4,203,097	10,626,035
OECA LAN Support	169,950	870,298	619,838	171,741
Office of Planning & Policy Analysis and Communication	3,689,220	3,307,661	3,784,739	25,844
Office of Environmental Justice	<u>4,377,709</u>	<u>4,071,312</u>	<u>3,506,337</u>	<u>147,331</u>
Subtotal OECA Immediate Office	<u>14,891,919</u>	<u>17,776,568</u>	<u>19,345,821</u>	<u>14,137,216</u>
Office of Federal Activities (OFA)				
Mountaintop Mining	100,000	0	0	0
Office of Federal Activities	<u>3,882,890</u>	<u>4,243,379</u>	<u>3,925,327</u>	<u>3,365,683</u>
Subtotal OFA	<u>3,982,890</u>	<u>4,243,379</u>	<u>3,925,327</u>	<u>3,365,683</u>
Office of Criminal Enforcement, Forensics and Training (OCEFT)	5,860	376,471	144,226	5,076
Seattle - Region 10 CID	950,000	0	0	0
New York - Region 2 CID	0	4	0	0
Philadelphia - Region 3 CID	0	178	11	351
Chicago - Region 5 CID	0	316	-316	0
Legal Counsel and Resource Management Division	2,394,011	2,292,731	3,879,411	4,024,663
Criminal Investigation Division	24,825,805	26,554,894	29,209,206	28,037,040
Immediate Office - OCEFT	4,436,825	5,980,879	7,710,617	8,900,312
Director National Enforcement Investigations Center Division	13,277,509	11,776,798	12,926,095	11,350,618
National Enforcement Training Institute Division	<u>4,416,908</u>	<u>4,849,371</u>	<u>4,727,405</u>	<u>4,389,508</u>
Subtotal OCEFT	<u>50,306,917</u>	<u>51,831,643</u>	<u>58,596,655</u>	<u>56,707,569</u>
Office of Compliance (OC)	4,406	55,173	250,000	(1,835)
Natl Center for Manufacturing Sciences - MI	0	498,900	0	268,200
OC - Immediate Office	1,257,836	1,714,992	1,597,993	1,171,494
Enforcement Training Planning, Targeting and Data Division	10,918,959	11,619,063	15,378,100	11,782,347
Manufacturing, Energy, Transportation Division	3,437,581	3,784,530	3,059,311	2,687,694
Chemicals, Communications Services & Municipals Division	4,889,421	4,009,351	4,042,267	3,807,846
Agriculture and Ecosystems Division	3,038,898	3,286,122	2,858,325	2,646,410
National Enforcement Investigations Center Division - Denver	344,984	200,494	200,695	196,939
Pesticide Enforcement State Grants	(6,785)	0	0	0
Oil Spill	<u>86,797</u>	<u>93,914</u>	<u>83,812</u>	<u>90,085</u>
Subtotal OC	<u>23,972,097</u>	<u>25,262,539</u>	<u>27,470,504</u>	<u>22,649,180</u>

<u>Description *</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003 **</u>
<u>Office of Regulatory Enforcement (ORE)</u>	1,849	12,385	(179,500)	1,217
Office of Regulatory Enforce-CT Preparedness	0	0	179,500	0
Air Enforcement Division	5,504,258	5,491,460	6,008,786	5,194,148
ORE - Immediate Office	1,401,453	2,076,356	1,874,203	1,742,876
Multimedia Enforcement / Strategic Plan	3,099,974	3,519,682	3,598,316	3,311,178
RCRA Enforcement Division	1,870,403	2,848,255	2,675,715	1,956,279
Toxics and Pesticides Enforcement Division	2,827,124	2,989,763	3,321,565	2,796,276
Water Enforcement Division	<u>4,530,992</u>	<u>4,379,262</u>	<u>5,133,911</u>	<u>4,156,459</u>
Subtotal ORE	<u>19,236,053</u>	<u>21,317,163</u>	<u>22,612,495</u>	<u>19,158,433</u>
<u>Office of Site Remediation Enforcement (OSRE)</u>	86,047	448,846	401,348	0
Site Specific Region 03 Management Division	0	259	0	0
Policy and Program Evaluation Division	33,160,764	32,475,309	30,745,573	30,580,655
Regional Support Division	5,512,726	4,463,883	5,026,387	3,882,430
	<u>4,361,139</u>	<u>4,559,155</u>	<u>4,523,940</u>	<u>4,658,081</u>
Subtotal OSRE	<u>43,120,676</u>	<u>41,947,452</u>	<u>40,697,248</u>	<u>39,121,166</u>
<u>Federal Facilities Enforcement (FFE)</u>	5,542	1,887	0	0
Federal Facilities Enforcement	<u>3,469,509</u>	<u>3,320,449</u>	<u>3,312,100</u>	<u>2,915,788</u>
Subtotal FFE	<u>3,475,051</u>	<u>3,322,336</u>	<u>3,312,100</u>	<u>2,915,788</u>
<u>Office of Enforcement Capacity and Outreach (OECO)</u>	25,984	0	0	0
Communications	199,806	101,121	0	0
OECO - Immediate Office	915,167	760,511	0	0
Environmental Justice	97,800	58,014	0	0
Constituent Outreach and Communication	<u>508,379</u>	<u>239,447</u>	<u>0</u>	<u>0</u>
Subtotal OECO	<u>1,747,136</u>	<u>1,159,093</u>	<u>0</u>	<u>0</u>
<u>Office of Planning, Policy Analysis and Communications (OPPAC)</u>	0	0	0	15,606
Office of Planning, Policy Analysis and Communications	<u>0</u>	<u>0</u>	<u>0</u>	<u>3,055,729</u>
Subtotal OPPAC	<u>0</u>	<u>0</u>	<u>0</u>	<u>3,071,335</u>
<u>Office of Environmental Justice (OEJ)</u>	0	0	0	782,243
Office of Environmental Justice	<u>0</u>	<u>0</u>	<u>0</u>	<u>2,506,870</u>
Subtotal OEJ	<u>0</u>	<u>0</u>	<u>0</u>	<u>3,289,113</u>
Totals	<u>\$160,732,738</u>	<u>\$166,860,173</u>	<u>\$175,960,149</u>	<u>\$164,415,482</u>

* These descriptions came from the accounting system and may not match the official name of the organization.

** These figures are as of September 2, 2003.

In some cases, columns may not add up due to rounding.

Table B.6

OECA Actual FTE by Office for FY 2000-2003

<u>Description *</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003**</u>
<u>OECA Immediate Office</u>				
Administration and Resource Management Support Staff	20.9	25.9	31.6	26.4
Assistant Administrator Enforcement - Immediate Office	7.7	7.8	10.3	18.5
Office of Planning & Policy Analysis and Communication	23.1	24.2	25.8	-0.3
<u>Office Environmental Justice</u>	<u>14.2</u>	<u>14.5</u>	<u>13.9</u>	<u>0.9</u>
Subtotal OECA Immediate Office	<u>65.8</u>	<u>72.4</u>	<u>81.5</u>	<u>45.5</u>
<u>Office of Federal Activities</u>	<u>27.8</u>	<u>28.7</u>	<u>27.1</u>	<u>24.7</u>
<u>Office of Criminal Enforcement, Forensics and Training (OCEFT)</u>				
Legal Counsel and Resource Management Division	21.1	22.0	34.6	34.6
Criminal Investigation Division	192.1	203.0	216.6	208.1
Immediate Office Criminal Enforcement	17.8	16.0	18.1	22.9
Director National Enforcement Investigations Center Division	93.3	95.6	98.1	89.1
National Enforcement Training Institute Division	<u>22.1</u>	<u>23.2</u>	<u>23.3</u>	<u>22.5</u>
Subtotal OCEFT	<u>346.5</u>	<u>359.8</u>	<u>390.7</u>	<u>377.1</u>
<u>Office of Compliance (OC)</u>				
Office of Compliance - Immediate Office	7.2	6.6	7.1	6.0
Enforcement Planning, Targeting and Data Division	66.2	67.9	69.9	62.6
Manufacturing, Energy, Transportation Division	23.7	23.3	20.6	20.9
Chemicals, Communications Services & Municipals Division	25.2	21.3	24.8	21.5
Agriculture and Ecosystem Division	22.4	22.3	20.4	17.8
National Enforcement Investigations Center Division Denver	3.6	2.2	2.1	1.9
Oil Spill	<u>0.9</u>	<u>1.0</u>	<u>0.9</u>	<u>0.8</u>
Subtotal OC	<u>149.4</u>	<u>144.5</u>	<u>145.7</u>	<u>131.3</u>
<u>Office of Regulatory Enforcement (ORE)</u>				
Air Enforcement Division	34.6	37.0	37.0	36.6
Office of Regulatory Enforcement - Immediate Office	6.8	9.0	9.6	8.2
Multimedia Enforcement / Strategic Plans	21.2	24.2	22.7	24.2
RCRA Enforcement Division	16.4	17.2	17.2	14.5
Toxics and Pesticides Enforcement Division	23.9	26.8	24.6	22.0
Water Enforce Division	<u>26.1</u>	<u>26.0</u>	<u>26.9</u>	<u>24.8</u>
Subtotal ORE	<u>129.1</u>	<u>140.1</u>	<u>137.8</u>	<u>130.3</u>
<u>Office of Site Remediation and Enforcement (OSRE)</u>				
Management Division	17.1	17.9	18.4	15.0
Policy and Program Evaluation Division	32.3	30.5	33.2	30.0
Regional Support Division	<u>30.6</u>	<u>35.0</u>	<u>32.5</u>	<u>31.3</u>
Subtotal OSRE	<u>79.9</u>	<u>83.4</u>	<u>84.1</u>	<u>76.3</u>

<u>Description *</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003**</u>
<u>Federal Facility Enforce</u>	<u>18.8</u>	<u>20.7</u>	<u>19.6</u>	<u>18.3</u>
<u>Office of Enforcement Cap and Outreach (OECO)</u>				
Communications	2.8	1.6		
Office of Enforcement Cap and Outreach - Immediate Office	3.8	2.2		
Environmental Justice	0.9	0.6		
Constituent Outreach and Communication	<u>4.6</u>	<u>2.5</u>	<u>0.0</u>	
Subtotal OECO	<u>12.1</u>	<u>6.9</u>	<u>0.0</u>	<u>0.0</u>
<u>Office of Planning, Policy Analysis and Communication</u>				<u>22.0</u>
<u>Office of Environmental Justice</u>				<u>11.9</u>
Totals	<u>829.3</u>	<u>856.5</u>	<u>886.6</u>	<u>837.5</u>

* These descriptions came from the accounting system and may not match the official name of the organization.

** These figures are as of August 29, 2003.

In some cases, columns may not add up due to rounding.

Table B.7

OECA Actual Costs for Contracts and Assistance Agreements by Office in Fiscal 2000-2003

Description *	2000	2001	2002	2003 **
Immediate Office - Assistant Administrator for Enforcement and Compliance Assurance	\$0	\$6,555	\$52,589	\$0
Administration and Resource Management Support Staff	10,475	386,860	317,379	645,023
OECA - Immediate Office	172,162	306,187	591,260	1,165,753
OECA LAN Support	4,585	1,405	423,104	(162,854)
Office of Planning & Policy Analysis and Communication	512,147	794,503	823,934	(10,139)
Office of Environmental Justice	<u>1,802,093</u>	<u>2,298,745</u>	<u>1,673,657</u>	<u>5,473</u>
Subtotal OECA Immediate Office	<u>2,501,462</u>	<u>3,794,254</u>	<u>3,881,922</u>	<u>1,643,256</u>
Office of Federal Activities (OFA)				
Mountaintop Mining	100,000	0	0	0
Office of Federal Activities	<u>821,297</u>	<u>1,294,902</u>	<u>908,685</u>	<u>433,817</u>
Subtotal OFA	<u>921,297</u>	<u>1,294,902</u>	<u>908,685</u>	<u>433,817</u>
Office of Criminal Enforcement, Forensics and Training (OCEFT)				
Seattle - Region 10 CID	950,000	0	0	0
Legal Counsel and Resource Management Division	272,775	36,640	218,450	114,685
Criminal Investigation Division	419,512	482,283	614,577	509,249
Immediate Office - OCEFT	1,062,807	2,458,594	1,512,588	2,092,639
Director National Enforcement Investigations Center Division	2,624,277	1,405,641	2,040,259	1,228,722
National Enforcement Training Institute Division	<u>1,552,222</u>	<u>2,042,345</u>	<u>1,827,628</u>	<u>1,637,440</u>
Subtotal OCEFT	<u>6,881,594</u>	<u>6,425,504</u>	<u>6,213,502</u>	<u>5,582,735</u>
Office of Compliance (OC)	0	0	100,000	0
Natl Ctr for Manuf Sciences - MI	0	498,900	0	268,200
OC - Immediate Office	370,452	791,566	664,077	355,929
Enforcement Planning, Targeting and Data Division	3,812,790	4,330,566	7,509,697	4,418,435
Manufacturing, Energy, Transportation Division	826,362	1,270,580	781,292	277,689
Chemicals, Communications Services & Municipals Division	2,119,999	1,688,925	1,382,320	1,254,473
Agriculture and Ecosystem Division	<u>630,659</u>	<u>814,600</u>	<u>528,477</u>	<u>428,302</u>
Subtotal OC	<u>7,760,261</u>	<u>9,395,138</u>	<u>10,965,863</u>	<u>7,003,028</u>
Office of Regulatory Enforcement (ORE)				
Air Enforcement Division	1,714,841	1,537,080	1,870,969	923,643
ORE - Immediate Office	463,553	819,765	571,560	622,056
Multimedia Enforcement / Strategic Plans	675,007	918,821	872,989	384,206
RCRA Enforcement Division	70,511	996,436	712,194	229,341
Toxics and Pesticides Enforcement Division	279,269	242,865	547,408	252,672

<u>Description *</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003 **</u>
Water Enforcement Division	<u>1,624,535</u>	<u>1,501,850</u>	<u>2,030,246</u>	<u>1,105,811</u>
Subtotal ORE	<u>4,827,716</u>	<u>6,016,816</u>	<u>6,605,365</u>	<u>3,517,729</u>
<u>Office of Site Remediation Enforcement (OSRE)</u>				
Management Division	30,974,488	30,492,264	28,763,925	28,259,032
Policy and Program Evaluation Division	2,299,505	1,474,411	1,628,045	451,926
Regional Support Division	<u>908,639</u>	<u>793,401</u>	<u>775,039</u>	<u>762,377</u>
Subtotal OSRE	<u>34,182,632</u>	<u>32,760,076</u>	<u>31,167,009</u>	<u>29,473,336</u>
<u>Federal Facilities Enforcement</u>	<u>1,272,964</u>	<u>946,217</u>	<u>974,331</u>	<u>567,064</u>
<u>Office of Enforcement Cap and Outreach</u>	<u>507,132</u>	<u>601,311</u>	<u>0</u>	<u>0</u>
<u>Office of Planning, Policy Analysis and Communications (OPPAC)</u>	0	0	0	3,560
Office of Planning, Policy Analysis and Communications	<u>0</u>	<u>0</u>	<u>0</u>	<u>344,625</u>
Subtotal OPPAC	<u>0</u>	<u>0</u>	<u>0</u>	<u>348,185</u>
<u>Office of Environmental Justice (OEJ)</u>	0	0	0	731,547
Office of Environmental Justice	<u>0</u>	<u>0</u>	<u>0</u>	<u>918,024</u>
Subtotal OEJ	<u>0</u>	<u>0</u>	<u>0</u>	<u>1,649,571</u>
Totals	<u>\$58,855,058</u>	<u>\$61,234,217</u>	<u>\$60,716,678</u>	<u>\$50,218,721</u>

* These descriptions came from the accounting system and may not match the official name of the organization.

** These figures are as of September 2, 2003.

In some cases, columns may not add up due to rounding.

Table B.8**Resource Changes for Fiscal Years 2000-2004
National Enforcement and Compliance Assurance Program**

Description	Dollars (in thousands)	FTE
FY 2000 Operating Plan	\$445,838	3,565
Difference*	<u>\$19,149</u>	<u>(28)</u>
FY 2001 Operating Plan	\$464,987	3,537
Difference*	<u>\$9,335</u>	<u>(50)</u>
FY 2002 Operating Plan **	\$474,322	3,487
Difference*	<u>\$9,894</u>	<u>(22)</u>
FY 2003 Operating Plan	\$484,216	3,465
Difference*	<u>\$18,447</u>	<u>(54)</u>
FY 2004 President's Request	<u>\$502,663</u>	<u>3,411</u>

* Represents the difference between the fiscal year operating plans.

** The 2002 operating plan included the supplemental appropriation.

Table B.9

**National Enforcement and Compliance Assurance Program
Total Operating Plan by Headquarters and Regional Office
(Dollars in Thousands, All Appropriations)**

Organization	2000	2001	2002	2003
Office of Compliance	\$25,077	\$26,178	\$24,990	\$24,159
Office of Compliance State Grants	\$27,276	\$27,216	\$27,216	\$27,216
Office of Regulatory Enforcement	\$20,287	\$22,456	\$21,671	\$20,635
Office of Criminal Enforcement, Forensics, and Training	\$52,015	\$54,628	\$54,387	\$58,810
Homeland Security Supplemental			\$10,991	
Office of Site Remediation Enforcement	\$20,421	\$20,067	\$21,771	\$15,380
DOJ Support	\$28,663	\$28,437	\$28,150	\$27,967
Federal Facilities Enforcement Office	\$3,702	\$3,315	\$3,396	\$3,248
Office of Federal Activities	\$4,127	\$4,484	\$4,361	\$3,959
Office of Environmental Justice	\$3,793	\$4,671	\$4,424	\$5,360
Office of Enforcement Capacity and Outreach	\$1,410			
Office of Planning, Policy Analysis, and Communications (OPPAC)	\$2,710	\$3,792	\$3,655	\$3,482
Immediate Office, Assistant Administrator for Enforcement and Compliance Assurance	<u>\$10,460</u>	<u>\$11,770</u>	<u>\$12,959</u>	<u>\$13,575</u>
Subtotal OECA	<u>\$199,941</u>	<u>\$207,014</u>	<u>\$217,971</u>	<u>\$203,791</u>
Region 1	\$17,749	\$18,632	\$17,731	\$20,890
Region 2	\$25,884	\$27,497	\$26,623	\$29,911
Region 3	\$28,975	\$28,744	\$28,407	\$30,323
Region 4	\$32,298	\$33,974	\$35,411	\$36,649
Region 5	\$39,107	\$42,637	\$43,441	\$46,680
Region 6	\$24,954	\$26,800	\$26,926	\$28,386
Region 7	\$15,745	\$15,892	\$17,591	\$17,692
Region 8	\$18,307	\$18,747	\$17,342	\$19,535
Region 9	\$26,188	\$27,710	\$25,460	\$29,943
Region 10	<u>\$16,690</u>	<u>\$17,339</u>	<u>\$17,418</u>	<u>\$20,417</u>
Subtotal Regional Offices	<u>\$245,897</u>	<u>\$257,972</u>	<u>\$256,350</u>	<u>\$280,426</u>
Totals	<u>\$445,838</u>	<u>\$464,986</u>	<u>\$474,321</u>	<u>\$484,217</u>

Table B.10

**National Enforcement and Compliance Assurance Program
Total Enacted Budget FTE by Headquarters and Regional Office
(All Appropriations)**

Organization	2000	2001	2002	2003
Office of Compliance	159	156	148	149
Office of Regulatory Enforcement	139	143	140	138
Office of Criminal Enforcement, Forensics, and Training	386	386	376	400
Homeland Security Supplemental			80	
Office of Site Remediation Enforcement	88	88	87	87
Federal Facilities Enforcement Office	21	21	20	21
Office of Federal Activities	28	28	27	26
Office of Environmental Justice	13	13	13	13
Office of Enforcement Capacity and Outreach	11			
Office of Planning, Policy Analysis, and Communications (OPPAC)	22	27	24	23
Immediate Office, Assistant Administrator for Enforcement and Compliance Assurance	31	34	32	31
Reserve	<u>6</u>	—	—	—
Subtotal OECA	<u>904</u>	<u>896</u>	<u>947</u>	<u>888</u>
Region 1	183	181	174	176
Region 2	279	277	266	270
Region 3	295	292	283	286
Region 4	371	369	354	360
Region 5	454	452	435	441
Region 6	284	282	269	275
Region 7	183	182	175	177
Region 8	176	174	168	171
Region 9	254	252	243	246
Region 10	<u>181</u>	<u>180</u>	<u>173</u>	<u>175</u>
Subtotal Regional Offices	<u>2,660</u>	<u>2,641</u>	<u>2,539</u>	<u>2,577</u>
Totals	<u>3,564</u>	<u>3,537</u>	<u>3,486</u>	<u>3,465</u>

Table B.11

**National Enforcement and Compliance Assurance Program
Enacted Budget FTE Levels, Fiscal Years 2000-2003
by Appropriation**

Appropriation	2000	2001	2002	2003
Environmental Program and Management	2,320	2,300	2,178	2,237
Superfund	1,145	1,137	1,129	1,129
Oil Spills	16	16	16	16
Leaking Underground Storage Tanks	6	6	6	5
Science and Technology	78	78	78	78
Homeland Security Supplemental	—	—	80	—
Totals	<u>3,565</u>	<u>3,537</u>	<u>3,487</u>	<u>3,465</u>

Table B.12

**National Enforcement and Compliance Assurance Program
Enacted Budget FTE Levels, Fiscal Years 2000-2003
by Agency Goal**

Goal	2000	2001	2002	2003
Goal 5	1,067	1,060	1,049	1,053
Goal 7	31	26	26	26
Goal 9	<u>2,466</u>	<u>2,451</u>	<u>2,412</u>	<u>2,386</u>
Totals	<u>3,564</u>	<u>3,537</u>	<u>3,487</u>	<u>3,465</u>

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