



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

December 15, 2003

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Management Review of the Office of Criminal Enforcement, Forensics and Training

**FROM:** John Peter Suarez  
Assistant Administrator

**TO:** All-OCEFT

As you are all aware, in July 2003 I requested a management review of OCEFT. The review was intended to analyze the management practices of the office and to recommend improvements that would further the mission of the organization. Specifically, I asked for a review that would provide me with an in-depth analysis of the criminal program and respond to the following questions:

1. What is the overall condition of the organizational and management culture within OCEFT?
2. Is the current structure and deployment of OCEFT resources optimal for effective utilization?
3. Are there management process changes which could contribute further to the strategic direction of OCEFT and the effective oversight of OCEFT resources?
4. How well defined are OCEFT's links to the mission and organizations within EPA and relevant Federal, State and local criminal justice organizations?
5. How well does OCEFT measure the results of its activities, and are there management process changes which could more effectively measure the effectiveness of the criminal enforcement program in particular?

After several months of interviews and visits to many regional offices nationwide, the review team has submitted its report to me. They had the opportunity to speak with many of you and have expressed to me their appreciation at the level of candor and cooperation they received as they conducted their interviews. I am also grateful for the cooperation and professionalism of OCEFT staff and management during the conduct of this review.

Now that I have had the opportunity to read the report and review its recommendations, I would like to begin a process to implement some of the recommendations. Obviously, your continued input on the report and its recommendations will be important to me as I begin to work with the new Acting OCEFT Director to improve the management and resources of the criminal program. As I stated in July, this is not about individual personnel grievances or issues and I do not intend to address those matters in the context of the review and its follow-up. And although I have read the recommendations and given thoughtful consideration to the views presented in the review, not all the recommendations will be implemented.

### Implementation Strategy

I would like to take this opportunity to present to you my preliminary views on the report and share with you my vision for implementation of its recommendations. Your comments and feed-back are welcome. Having read the recommendations and given consideration to the underlying analysis, I will begin to implement some of the recommendations almost immediately while others will be implemented over a period of several months. In still other cases, I have reserved judgement on whether or not the recommendation should be implemented until such a time as alternative solutions prove insufficient. As we begin this process there will be some individuals who agree with what we are doing and others who do not. I want to assure you that whatever changes are made are intended with the best interests of OCEFT in mind and in the interests of improving the enforcement program as a whole.

### Immediate Implementation

I have met with the Acting OCEFT director and he and I have discussed the report in detail. One of the first priorities for the Director will be to review and streamline the functions of the immediate office including an assessment of appropriate staffing levels and grade structures. (Recommendation 3.1) The assessment will consider whether 1811 series employees are best deployed as investigators rather than as administrative or non-investigative staff. This does not mean that all 1811 series administrative positions will be eliminated. It does mean that there will be a review of all the positions and determinations will be made about the best deployment of resources.

Another immediate change will be to transfer civil investigator FTE, currently housed in the Legal Counsel and Resources Management Division (LCRMD), to the Office of Regulatory Enforcement. (Recommendation 3.5) This move will initially involve the transfer of the FTE rather than a physical relocation and will be done in consultation with affected employees. I anticipate that this will result in greater communication between the civil and criminal programs and strengthen the civil investigative function.

In addition, OCEFT will develop a staffing plan. (Recommendation 3.10) It is my understanding that there has been an on-going internal effort to develop a staffing plan and its completion should be a priority. Clearly, as the plan develops it should be shared with all employees and developed in consultation with employee unions.

One of the overarching themes of the report was the problem of communication within

the organization at all levels. Effective immediately, I am requiring the Directors of OCEFT and CID to begin regularly visiting field locations and meeting with staff as well as their counterparts in the Regions' civil enforcement program. (Recommendation 4.4) In addition to field visits, OCEFT senior management should continue to find ways to improve communications at headquarters and in the field. (Recommendation 4.5) This will necessitate the planning of national meetings at a minimum every other year and the encouragement of open, on-going dialogue with staff located at both headquarters and in the field.

One of the most important recommendations in the report involves the establishment of consistent and explicit policies for hiring, promotion and re-assignment within the organization including decisions to move agents or to create Area or Resident offices. (Recommendation 4.8) This recommendation must be implemented as a top priority and must include the development of career plans for advancement within the organization.

### Intermediate Implementation

Other recommendations in the report should be adopted on a longer term basis. For example, within the next 90 days, the Criminal Investigations Division must designate a single management point of contact for the criminal enforcement program in each region. (Recommendation 3.6) This does not mean that "Area Offices" that are not co-located with EPA regional offices will be closed, though some closures are likely. Instead, it means that within each EPA Regional office, there should be a designated Special Agent-in-Charge with the responsibility to manage criminal resources throughout that region. In order to effectuate that important role, the Special Agent-in-Charge needs to be co-located with the EPA regional office, so that communication between OCEFT and the Regional Administrator and Regional staff can be strengthened.

In addition, during the next 120 days, the Criminal Investigation Division should complete an evaluation and make determinations about the number and location of offices to be maintained and how to staff those offices. (Recommendation 3.7) A thorough analysis of needs will allow OCEFT to make more informed decisions about the location and staffing needs of Area and Field offices, and will help eliminate inefficient deployment of resources. This particular recommendation may result in the consolidation of some offices, but such consolidation will only occur once OCEFT has completed their review and evaluation, and after receiving input from all of the offices.

The issue of whether OCEFT has a role in the broader homeland security function is a difficult question. (Recommendation 3.13) Because of the unique expertise of agents in the investigation of environmental crime and the contribution that expertise could make to an environmental terrorist incident, EPA would by necessity have a role in such a scenario. On the other hand, where EPA's specific expertise is not necessary, the full time deployment of eight agents to the FBI Joint Terrorism Task Force (JTTF) is too great a diversion from CID's core mission: to investigate and support the prosecution of environmental crimes. Unless there is a specific articulated need for the deployment of agents to work on homeland security, the full-time assignment of eight agents is excessive. Accordingly, I am directing that those special agents currently assigned full-time to the JTTFs be returned to their respective offices to work on environmental investigations. I have asked the Acting Director to communicate with the

affected offices so that a smooth transition from the JTTFs is accomplished.

### Long-term Implementation

There are many other recommendations that will be implemented during the next several months and will follow management plans as the new Director develops priorities for the office. These include a re-evaluation of the referral process, (Recommendation 4.1), development of a strategic, long-term plan to work with the civil side of EPA, (Recommendation 4.2) and to actively develop and communicate a strategic vision among Federal and State prosecutors that will assist in case screening and selection. (Recommendation 5.4) A new Mission Statement for OCEFT will also be drafted. (Recommendation 6.1)

One of the recommendations in the report involves the management of the Administrator's protection detail. (Recommendation 3.12) The report suggests that the Agency needs to revisit how to best manage this mandate. We are exploring ways to develop a funding source for the detail outside of OCEFT resources and have committed to hiring agents specifically for the detail. This decision was made in order to minimize the impact of the detail on agents who were also working on investigating cases and to allow agents who wanted to gain experience doing a protection detail, to do so without distraction. This will also permit additional necessary resources to be devoted to our core mission of investigating environmental crimes. CID agents will still be called upon to support the Administrator's detail at times, but with the additional staff and funding in place, such instances should be limited.

Finally, I would like to address the issue of whether NEIC and NETI belong within OCEFT. The report recommends that NEIC should be organizationally separated from OCEFT (Recommendation 3.3) There is no question that NEIC is an institution that must support both the criminal and civil investigative functions with gold-standard lab capability and national experts in every environmental media. There is also no question in my mind that NEIC must continue to offer strong and consistent support for CID's needs for forensic lab support. Consequently, this is one recommendation that will require additional analysis and thought. As we make progress on other recommendations, I would like to evaluate whether, as other changes in management and organizational culture are made within OCEFT, some of the challenges faced by NEIC in its relationship with the criminal program might be resolved. Therefore, the question of whether NEIC should or should not be separated from OCEFT will be given additional thought and discussion after we have implemented the other recommendations.

With regard to NETI, the report suggests that it should be consolidated within the Office of Compliance. (Recommendation 3.8) I agree with this recommendation and believe that with the exception of FLETC, a highly specialized law enforcement training program, NETI should be housed and supported within the Office of Compliance; FLETC however, should remain in OCEFT. The missions of these two offices would greatly complement each other since OC spends considerable resources on the development of training materials, delivery of training programs to EPA and providing funding for State training programs. This bifurcation is appropriate because NETI has a more expansive clientele within the Agency and among the States, while FTETC principally serves CID.

Finally, I agree with the report's conclusion that, OC can be an invaluable resource to

OCEFT and CID in the development of criteria for measures of success. (Recommendation 6.2). This assistance will enable OCEFT to implement a methodology for measuring success in a way that recognizes the distinction between straightforward and complex cases and the distinction between cases with high deterrent value and those that can be expected to produce relatively low deterrence. This methodology must also track overall levels of investigative activity and develop measures tailored to reflect the nuances of the program. (Recommendation 6.3) The experience of the civil enforcement program is illustrative. More sophisticated methods have been developed to track compliance and enforcement statistics. We have been able to use strategic targeting and deploy resources to create a more effective enforcement program. Similarly, OCEFT must maintain a commitment to bringing the types of cases that will have the greatest environmental impact even though some of those cases will require utilization of significantly greater resources than cases with a lesser degree of environmental significance. (Recommendation 6.4 and 6.5)

### Conclusion

I hope that this memorandum provides you with a preliminary overview of the recommendations that I believe are most significant to the improvement of the management and structure of OCEFT. Obviously, implementing many of the recommendations of the report will take some time and significant input from all levels of OCEFT staff and management. On the other hand, some recommendations will be implemented immediately and should have immediate positive effects on the management and morale of the office. I will continue to meet with the new Director and give him as much support as I can to ensure that the criminal program is not only strengthened but improved.

cc: Tom Gibson  
Rich McKeown  
OECA-Office Directors  
Regional Administrators  
Deputy Regional Administrators  
All-Regional Criminal Enforcement Counsel



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

November 25, 2003

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Report of the Management Review of the Office of Criminal Enforcement,  
Forensics and Training

FROM: A. Stanley Meiburg  
Deputy Regional Administrator

TO: John Peter Suarez  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

It is a great pleasure to send you this report on the results of the review of the Office of Criminal Enforcement, Forensics and Training (OCEFT) which you asked me to undertake in July. This has been an interesting project, and I hope you and the new leadership in OCEFT will find the report helpful in meeting the challenges which you face on behalf of all of us at EPA.

As noted in the Introduction, this review would not have been possible without the outstanding support of the team which worked with me on this project: Lourdes Bufill, Dennis DeVoe, Becky Hendrix, and Michael LeDesma. In addition, Becky Cover of my staff has been indispensable in helping to turn the disparate pieces of the report into a single consistent document. The review would also have been fruitless without the outstanding assistance which I received from so many OCEFT staff. Given the anxieties which accompany any review of this sort, I could not have received better cooperation.

Finally, I want to thank you for the independence and support which you have afforded me throughout the course of this review. It has been an honor and a privilege to do this work, and I look forward to discussing its results with you when you have had a chance to read the report and to assisting you further in any way that I can.

cc: J. I. Palmer, Jr.  
Lourdes Bufill  
Dennis DeVoe  
Becky Hendrix  
Michael LeDesma

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**U.S. Environmental Protection Agency  
Review of the Office of Criminal Enforcement,  
Forensics and Training**

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**November 2003**

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## EXECUTIVE SUMMARY

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In July 2003, the U.S. Environmental Protection Agency's (EPA) Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), John Peter Suarez, requested a management review of the Office of Criminal Enforcement, Forensics and Training (OCEFT). The Assistant Administrator specifically asked five questions.

- 1. What is the overall condition of the organizational and management culture within OCEFT?*
- 2. Is the current structure and deployment of OCEFT resources optimal for effective utilization?*
- 3. Are there management process changes which could contribute further to the strategic direction of OCEFT and the effective oversight of OCEFT resources?*
- 4. How well defined are OCEFT's links to the mission and organizations within EPA and relevant Federal, State, and local criminal justice organizations?*
- 5. How well does OCEFT measure the results of its activities, and are there management process changes which could more effectively measure the effectiveness of the criminal enforcement program in particular?*

This report responds to the Assistant Administrator's request. It is divided by chapters, with Chapter 1 giving a brief history of OCEFT, and Chapters 2 through 6 addressing each of the questions in turn. Although each chapter has a distinct focus, we found during the review that the questions overlap, leading to some repetition in the report.

The team is grateful to the many OCEFT employees who were generous with their time, thoughts and observations. In the course of the review we developed a strong appreciation for the quality and dedication of the OCEFT staff, the difficult issues they face, and the strength and passion which they bring to their work. We could not have conducted the review without their cooperation, or without the support and independence given to us by the Assistant Administrator of OECA.

### ***1. What is the overall condition of the organizational and management culture within OCEFT?***

There is no single OCEFT culture. Instead, there is a different culture within each of the Divisions. To the extent any single pattern dominates, it is the law enforcement orientation of the Immediate Office, CID, and (to a lesser extent) LCRMD. However, the cultural differences between these organizations, NEIC and NETI, and EPA as a whole, have produced conflict over the years. While this has resulted in some creative tension, it has also resulted in barriers among the different units of OCEFT and between OCEFT and the rest of EPA.

Within OCEFT there is conflict over the values that confer power and status within the organization, the criteria for rewarding or sanctioning employee behavior, the way in which management decisions are made and organizational objectives are defined, how the organization communicates information, and what makes someone truly a "member" of the organization beyond simply their employment status. These conflicts have manifested themselves inside the organization through such behaviors as comments in the press and Equal

Employment Opportunity complaints.

While there are strengths in OCEFT's organizational and management culture, there are elements which have gone awry. The new leaders of OCEFT face a tremendous challenge in building a culture which retains the strengths of the organization while correcting some of its less productive characteristics. We believe that some of the management process recommendations described in the answer to Question 3 will help build an even more effective culture within OCEFT.

**2. *Is the current structure and deployment of OCEFT resources optimal for effective utilization?***

OCEFT is made up of an Immediate Office and four Divisions. Staff in three of the Divisions, LCRMD, NEIC, and NETI, are predominantly located either in Washington, DC, or in Denver. The fourth and largest Division, CID, is very decentralized, with about 90 percent of its staff located in 16 Area offices, 32 Resident offices and 5 Technical offices around the United States.

We recommend that the Assistant Administrator of OECA and the next Director of OCEFT consider a reorganization of OCEFT which would return to a structure similar to the Office of Criminal Enforcement as it existed prior to the consolidation with NEIC and NETI in 1995. The benefits of combining the various functions now in OCEFT have not materialized as expected at the time of the formation of OCEFT, in part due to inherent conflicts in the missions of the component parts of the organization. In general, CID and LCRMD should be contained in a single office level organization, and NEIC and NETI should be separated. We also recommend that the new

Director of the Office of Criminal Enforcement streamline functions in the Immediate Office; establish revised, objective criteria for the deployment of both human and fiscal resources; consolidate strategic oversight of field operations in ten Area offices which are co-located with EPA's Regional offices; institute a regular and systematic national review of Area office performance; and decentralize management of resource execution to give Divisions and Area offices more operational flexibility.

Concerning OCEFT's involvement in homeland security, we recommend that EPA revisit how it implements protective service, in consultation with the Administrator, by looking again at what level of protection is needed and how best to provide it, including whether this function should remain housed in OCEFT. Whatever the Agency decides, it should fund the service above and beyond the core mission of criminal environmental investigations, provide adequate training and equipment for those conducting it, and minimize the effect of protective service on the work of Special Agents who are investigating cases. We further recommend that OCEFT should revisit its role in homeland security to determine the appropriate balance between homeland security and its core mission of investigating environmental crimes.

**3. *Are there management process changes which could contribute further to the strategic direction of OCEFT and the effective oversight of OCEFT resources?***

Like any large organization, OCEFT uses standard management processes to direct and monitor the work of its different components. This review focuses on five such processes: case referrals, strategic planning and management, field review and oversight, communications, and human resources.

We recommend that OCEFT reassess the referral process. This reassessment should consider the significance of the referral, expectations for its timeliness and quality, and the value of referrals to U.S. Attorneys. OCEFT should examine how referrals could communicate a strategic vision to prosecutors, to leverage scarce prosecutorial resources and maximize the attractiveness of EPA cases. OCEFT should also continue efforts to conduct strategic planning and better integrate its work with other parts of EPA.

We further recommend that the Director of OCEFT and the Director of CID visit field locations and meet with staff on a regular basis, meet regularly with senior leaders of EPA's civil enforcement programs in the Regional offices, and participate actively in regular OECA Senior Management Forums. OCEFT should also develop an explicit review protocol for conducting oversight of field operations, and continue to look for other means to improve communication. These should include regular Special Agent in Charge (SAC) conferences and, if at all possible, a national meeting of all Special Agents at least every other year.

Because of the sensitivity of the criminal enforcement program, we recommend that OCEFT engage an independent organization with experience in Federal criminal law enforcement to conduct an audit of its criminal enforcement program. Such an audit could yield insights about the operation of this program which are beyond the scope of this review, build confidence with outside groups, and ensure that the professionalism of this critical part of the organization is maintained and expanded.

Finally, we recommend that OCEFT establish consistent and explicit policies for hiring, promotion, and reassignment, including

criteria for moving agents or creating Area or Resident offices.

#### ***4. How well defined are OCEFT's links to the mission and organizations within EPA and relevant Federal, State and local criminal justice organizations?***

Healthy linkages both within OCEFT and with organizations outside of OCEFT are critical to the effectiveness of the office. Relationships with the U.S. Attorneys Office and the U.S. Department of Justice (DOJ) are especially important, as they collectively prosecute almost all of the cases that OCEFT develops. Ties to Regional office staff, State and local law enforcement, NEIC, and other Federal agencies can also play vital roles in the successful development and prosecution of environmental cases.

While strong ties exist among some components of OCEFT, and between OCEFT and some of EPA's partner agencies, many report that good relations with internal and external entities depend heavily on the personalities of the individuals involved or an immediate coincidence of interest. Where interests diverge or personalities conflict, broken relationships have persisted for months or even years. This has produced inconsistency internally within OCEFT and externally with other agencies.

The most seriously impaired of OCEFT's relationships exist *within* OCEFT. Some important relationships have remained in ill-repair for many years, leaving personnel with no place to articulate their concerns and grievances except in the press and the courts. To make OCEFT's internal relationships stronger and more uniform, headquarters management should more actively and systematically manage these

relationships, not merely the substantive issues around which the relationships are centered.

There is considerable variability in OCEFT's external relationships with other law enforcement agencies. Where there is a general confluence of interest, as in the case of Federal and State prosecutors, the relationship is generally robust. Where SACs have developed and managed relationships with Regional staff and State and local investigators, these linkages have also remained strong and fruitful. Still, where a relationship has failed, in most instances there is no mechanism by which to identify this failure and address it. As in the case internally, OCEFT management should seek regular feedback on the health of its relationships with external entities. A specific example is that SACs should conduct more proactive and consistent outreach with EPA Regional offices.

Finally, OCEFT should actively develop, communicate and promote a strategic vision among Federal and State prosecutors as a way of making the most of scarce prosecutorial resources. This should include a mechanism to maximize the attractiveness of EPA cases to prosecutors. A clearer strategic vision and more systematic case screening by SACs could contribute to the redefined referral process discussed above.

***5. How well does OCEFT measure the results of its activities and are there management process changes which could more effectively measure the effectiveness of the criminal enforcement program in particular?***

The challenge of measuring the effectiveness of criminal enforcement is common to all law enforcement agencies. EPA would like to associate quantitative, measurable environmental results with all of its activities,

and the Agency has been recognized as a leader in the Federal Government in integrating its planning and budgeting activities with information about Agency performance. In recent years, the Fiscal Year 2002 Annual Report and the annual Enforcement and Compliance Assurance Accomplishments Report have presented substantial information about environmental outcomes resulting from Agency enforcement actions.

Criminal enforcement poses special challenges, however. OCEFT has kept a wide range of traditional statistics, including records on the number of cases initiated, the number of cases referred for prosecutorial assistance to U.S. Attorneys Offices or to DOJ, the number of defendants charged, the length of sentences handed out in cases prosecuted, and the amount of criminal fines imposed.

OCEFT staff are divided over the merits of specific traditional performance measures. These differences reflect many perspectives, but there is a palpable sense within OCEFT, and especially CID, that the desire to produce favorable traditional enforcement statistics creates pressures for actions which may not represent the most strategic use of limited investigative and prosecutorial resources. There are potentially grave dangers associated with an over-emphasis on quantitative statistics, and while an evaluation of the merits of cases initiated by OCEFT in recent years is beyond the scope of this review, continued vigilance in this area is essential.

The most important, and the most difficult, measurement need is for OCEFT leadership to define and implement a consistent, unifying vision of effective environmental criminal enforcement. Measurements should flow from this vision. We recommend, as a first step, that

OCEFT revise its vision and mission statements, to provide a basis for thinking more clearly about how to measure OCEFT's performance. We further recommend that OCEFT develop relational measures of performance (*e.g.*, how many investigations opened lead to prosecutions), and develop measures which distinguish between straightforward and complex cases. Finally, we recommend that OCEFT invest in strategic analysis of criminal enforcement data, and develop measures which recognize participation by criminal investigators in integrated compliance strategies. This last recommendation is especially critical, since without such measures there will be little incentive for agents and their managers to support integrated compliance efforts.

\* \* \* \* \*

OCEFT faces many challenges in the years ahead. The good news is that there is a solid

core of hard working, dedicated employees who are committed to their work and to using their skills on behalf of environmental protection. To be most effective, they will need strong leadership committed to using OCEFT's distinctive skills and tools as an integral part of the larger mission of EPA. This will require both internal management reform and a concerted effort to reconnect OCEFT with other partners both inside and outside of EPA.

OCEFT can affect its perception of itself, and its perception by others, through its choice of a vision, its statement of its mission, by the measures it uses to tell itself and others how well it is doing to achieve both, and by the way in which its leaders and members communicate both inside and outside of OCEFT. The changes recommended in this report will help OCEFT become more productive, more unified in its purpose and conduct, and more effective as an essential part of EPA.

## LIST OF ACRONYMS

AUSA	Assistant U.S. Attorney
CID	Criminal Investigation Division
DAA	Deputy Assistant Administrator
DOJ	U.S. Department of Justice
ECTF	Environmental Crimes Task Force
EEO	Equal Employment Opportunity
EPA	U.S. Environmental Protection Agency
FBI	U.S. Federal Bureau of Investigation
FLETC	Federal Law Enforcement Training Center
FTE	Full-Time Equivalent
GAO	U.S. General Accounting Office
IRS	U.S. Internal Revenue Service
LCRMD	Legal Counsel and Resources Management Division
M&O	Management and Organization Division
NCERT	National Counter-terrorism Evidence Response Team
NEIC	National Enforcement Investigations Center
NETI	National Enforcement Training Institute
OCEFT	Office of Criminal Enforcement, Forensics and Training
OCI	Office of Criminal Investigations
OCR	Office of Civil Rights
OECA	Office of Enforcement and Compliance Assurance
OECM	Office of Enforcement and Compliance Monitoring
PPA	Pollution Prosecution Act of 1990
RCEC	Regional Criminal Enforcement Counsel
SAC	Special Agent in Charge
SES	Senior Executive Service

## INTRODUCTION

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In July 2003, the U.S. Environmental Protection Agency's (EPA) Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), John Peter Suarez, requested a management review of the Office of Criminal Enforcement, Forensics and Training (OCEFT). A copy of this request is included as Appendix 1 to this report. The review was timely because of the recent reassignment of the incumbent Director of OCEFT. In addition, in the wake of the September 11, 2001, attacks, OCEFT took on a variety of new assignments. Finally, over the last year, press reports suggested that there was discontent within the ranks of OCEFT staff.

The confluence of these events suggested an opportunity to review the current operations of OCEFT to see how the organization might meet its challenges even more effectively. The Assistant Administrator specifically asked five questions.

1. What is the overall condition of the organizational and management culture within OCEFT?
2. Is the current structure and deployment of OCEFT resources optimal for effective utilization?
3. Are there management process changes which could contribute further to the strategic direction of OCEFT and the effective oversight of OCEFT resources?
4. How well defined are OCEFT's links to the mission and organizations within EPA and relevant Federal, State, and local criminal justice organizations?

5. How well does OCEFT measure the results of its activities, and are there management process changes which could more effectively measure the effectiveness of the criminal enforcement program in particular?

This report responds to the Assistant Administrator's request. It is divided by chapters, with Chapter 1 giving a brief history of how OCEFT evolved, and Chapters 2 through 6 addressing each of the questions in turn. Although the chapters are intended to be self contained, we found in putting the report together that the questions overlap, leading to some repetition in the report. We have tried to keep this to a minimum, but just as some of the questions overlap, some of the answers do as well.

Our review consisted of extensive fieldwork by an internal EPA review team, including visits to OCEFT offices in Washington, DC, the National Enforcement Investigations Center (NEIC) in Denver, and Area offices of the Criminal Investigation Division (CID) in San Francisco, Denver, Dallas, Chicago, New York, Boston, Philadelphia, Atlanta and Washington, DC. The team also met or conducted telephone interviews with officials from other CID Area and Resident offices, other OCEFT staff, selected U.S. Attorneys Offices, the Environmental Crimes Section in the U.S. Department of Justice, the U.S. Federal Bureau of Investigation (FBI), and former officials of EPA's enforcement program. In addition, we reviewed many documents and reports, including internal OCEFT materials as well as past management studies by EPA teams, the U.S. General Accounting Office (GAO), the Inspector General, and the Environmental Law Institute.

At the beginning of the review, we sent a general invitation to all OCEFT employees to provide comments to the review team on the five questions raised by the Assistant Administrator. Many OCEFT staff gave the review team thoughtful responses which greatly assisted our work. This invitation also included a website to which OCEFT employees could submit confidential comments, where the sender of the comments could not be identified.

As a management review, the purpose of this study is limited. In introducing the review to OCEFT employees and others, we noted that there were several questions which were beyond our scope.

- The review is not a program evaluation. We did not attempt to assess, for example, the impact of criminal enforcement on environmental outcomes, or to determine how cases could proceed more quickly from investigation to prosecution.
- The review is not an investigation, particularly into individual allegations of inappropriate treatment or misconduct. EPA has existing mechanisms for addressing such allegations, and we respect the boundaries and roles of these mechanisms.
- The review is not a personnel evaluation. Again, we respect the Agency's existing mechanisms and chain of command for conducting performance appraisals.
- The review is not a surrogate method for selecting the next Director of OCEFT. Again, the normal selection process is being used for this responsibility.

The objective of the report is to provide useful management information, insights and

recommendations to the Assistant Administrator and the next Director of OCEFT. Its value should be measured by how well it accomplishes this objective. The report focuses on the underlying causes of behaviors which hinder the effective functioning of the organization, and this focus guides its recommendations.

Assistant Administrator Suarez's stated purpose in commissioning this review was to get the perspective of someone who was "familiar with the work of the enforcement program, but independent of the OECA reporting chain, and not a candidate for the OCEFT Office Director position." His guidance from the very beginning was to approach the review from an open and objective point of view, and the team has been afforded complete independence in its conduct.

As project leader I am grateful to OECA management for making available the resources necessary to conduct this review. I also wish to express my appreciation to my Regional Administrator, Jimmy Palmer, for providing me with the opportunity to conduct this work in the face of many competing needs within the Atlanta Regional Office of EPA.

I was fortunate to be assisted by an experienced team of EPA staff in this review. The team consisted of Dennis DeVoe, former Director of OECA's Administration and Resources Management Support Staff; Lourdes Bufill, attorney and Special Assistant to the Assistant Administrator; Becky Hendrix, my Special Advisor; and Michael LeDesma, attorney in OCEFT's Legal Counsel and Resources Management Division. All of the team members worked extraordinarily hard on this review, which is all the more remarkable considering that they all had continuing obligations in their existing positions while the review was going



on. Mr. LeDesma did not participate in fieldwork or interviews but provided invaluable assistance in analyses associated with this review and in drafting the report. I also owe a great debt to my office assistant, Becky Cover, who gave us invaluable help in the formatting and proofreading of this report. Notwithstanding the team's outstanding work, I take full responsibility for the report, especially for any faults which readers may perceive.

Finally, the team wishes to express its deepest gratitude to the many OCEFT employees who were generous with their time, thoughts and observations in the conduct of this review. We are acutely aware that participation in such a process can produce stress and anxiety. We pledged to respect all requests for confidentiality within the limits of the laws governing such

requests, and this report does not contain direct quotes attributed to individuals without their consent. OCEFT employees rewarded this pledge with their trust, and the review could not have been conducted without the cooperation we received. In its course we have developed a deep appreciation of the difficult issues facing OCEFT and for the quality and dedication of its people. We hope that they will find the report both challenging and useful.

A. Stanley Meiburg  
Deputy Regional Administrator  
EPA Region 4  
November 25, 2003

## CHAPTER 1: History and Background of OCEFT

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OCEFT was not an original component of EPA when the agency was formed in 1970. In the early years of the Agency, there was no structured criminal enforcement function. While some of the components of OCEFT predate the formation of EPA, the many shifts in the structure of the Agency's criminal enforcement program over time, combined with the steady expansion of EPA's statutory authority and responsibility, render the present day office quite different from anything which existed when EPA was created.

**Early History**—EPA was assembled from pieces of various departments, including water pollution control programs from the U.S. Department of the Interior; pesticides programs from the U.S. Department of Agriculture; and air, solid waste and drinking water programs from the U.S. Department of Health, Education and Welfare. The first organization plan for EPA created three functional Divisions headed by Assistant Administrators: Planning and Management; Standards and Enforcement and General Counsel; and Research and Monitoring. The belief behind this design was that only such functional structures could promote holistic approaches to the environment in an agency where segmented programs with different statutory authorities and independent organizational histories would always have a strong influence.

It was recognized early on that the original structure created too great a span of control, and in April 1971, the Enforcement and General Counsel functions were separated under a single Assistant Administrator. This reorganization reflected the view of EPA's first Administrator, William D. Ruckelshaus, that one way the new

Agency could establish its independence and break with the past was to implement a strong enforcement program. The 10 EPA Regional offices were also established as part of the 1971 reorganization, consolidating many field offices maintained by EPA's predecessor agencies. A chief purpose of the new Regional offices was to establish a structure to carry out the enforcement program in the field.

One of EPA's component units, the Interior Department's Federal Water Quality Administration, contained two National Field Investigations Centers—one in Denver, and one in Cincinnati. These centers provided technical and scientific capabilities as well as investigative and legal support for environmental enforcement activities, focused at first primarily on water pollution control. In 1972 the Cincinnati Center was abolished and the Denver Center was renamed the National Enforcement Investigations Center.

**Establishment of EPA's Criminal Enforcement Program**—EPA's statutory authority and staffing grew significantly in the 1970's, with the passage of landmark legislation in almost every field of pollution control. Along with the new statutes came increased enforcement authorities and resources. While these were predominantly civil and administrative authorities, EPA began to consider what this might mean for criminal enforcement. In June 1976, the first extensive guidelines for proceeding in criminal cases were issued by EPA's Assistant Administrator for Enforcement (by that time separated from the General Counsel's office).

During EPA's first 10 years, a small number of criminal cases were undertaken on an *ad hoc*

basis as appropriate circumstances presented themselves. Although NEIC provided support, EPA did not have its own trained criminal investigative staff, and relied on other Federal investigative agencies, grand juries, and U.S. Attorneys Offices to conduct investigations. In January 1981, the Attorney General confirmed EPA's authority to initiate or assist investigations into potential violations of the criminal provisions of the environmental statutes, and EPA's Deputy Administrator on January 5, 1981, authorized the creation of the Office of Criminal Enforcement within the Office of Enforcement and the hiring of trained criminal investigators<sup>1</sup> in each of EPA's 10 regions and at NEIC.

The early 1980's were an unsettled period at EPA. In 1981, EPA Administrator Anne Burford abolished the Office of Enforcement, distributing most of its technical personnel to the various media program offices and combining the remaining legal enforcement staff with the General Counsel in an Office of Legal and Enforcement Counsel. However, NEIC and the new Office of Criminal Enforcement remained as part of the legal enforcement staff. In mid-1982, a Director for the Office of Criminal Enforcement was selected and by September 1982, 23 experienced criminal investigators had been hired. A critical decision was made in this period that the criminal investigators should report to an office in Headquarters and not through the Regional Administrators like all other field personnel. There was discussion within the Agency about whether to hire the investigators from within EPA and provide law

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<sup>1</sup>For convenience, the terms "criminal investigator" and "Special Agent" are used interchangeably in this report to refer to employees hired as criminal investigators under the 1811 series of the General Schedule, with the title of Special Agent.

enforcement training or to hire from other law enforcement agencies and train the new hires in environmental regulations. Initially, most investigators came from the outside. Of the original 23 hires, most came from the Bureau of Alcohol, Tobacco and Firearms, the Drug Enforcement Administration, the FBI and the Washington, DC, Metropolitan Police Department. After receiving training in environmental regulations and attending a white-collar crime course at the Federal Law Enforcement Training Center (FLETC), the new agents were located in the EPA Regional offices in Philadelphia, Atlanta, Chicago, Seattle and Denver.

After Ms. Burford's resignation in mid-1983, returning Administrator William Ruckelshaus reestablished the General Counsel as a separate office and created the Office of Enforcement and Compliance Monitoring (OECM), with NEIC and the Office of Criminal Enforcement becoming part of OECM. In October 1983, OECM reorganized again, splitting the legal and investigative functions. Legal support for the criminal enforcement program remained centered in Washington, DC, under a Criminal Enforcement Counsel, but management responsibility for the investigators was placed in an Office of Criminal Investigations (OCI) under the Director of NEIC in Denver. Criminal investigators located throughout the 10 Regions reported to OCI in Denver and remained outside the EPA Regional organizational structure.

A 1985 memorandum entitled "Criminal Enforcement Strategy" from the Director of the Office of Criminal Enforcement and Special Litigation—the legal arm of the organization which remained in OECM—shows how the criminal program in those days was attempting to establish its place in EPA. The memo speaks

at length about the need to integrate the criminal program's efforts with the technical media programs and the legal support of the Regional Counsel's offices. Among other things, the strategy notes that "[I]ntegration can only be achieved when the media programs instinctively consider criminal enforcement as another option, along with civil judicial and administrative remedies, available to them to reach their compliance goals." However, it also describes Regional support for the criminal program as "given largely on an availability and voluntary basis," and "sometimes sporadic and occasionally unavailable."

By August of 1985, the criminal investigative staff had increased to 34 agents, located in each of EPA's Regional offices. The different reporting relationship of the criminal investigators from other functions became of concern to EPA's Regional Administrators, and at their initiative, a senior level Agency review committee was established in 1985 and charged with preparing formal recommendations on how to enhance the effectiveness of the criminal enforcement program. While the committee's report in July 1986 did not call for any organizational changes and recommended that Special Agents continue to report to a central office, the review committee made several additional recommendations. These included (1) a more visible demonstration of support for the program by top management, (2) better understanding of the roles of various Headquarters and Regional personnel participating in criminal enforcement work, (3) more accountability on the part of Headquarters and Regional managers for the support of the criminal program, including the designation of a Regional senior manager to coordinate Regional support for the criminal enforcement program and the explicit identification of resources to support the

criminal program in national program budget submissions, (4) more extensive communication and coordination between the criminal program and other entities, including the States and EPA's civil enforcement program, (5) more emphasis on training for Headquarters and Regional legal and technical staff as well as continued in-service training for Special Agents and State and local personnel, and (6) the development of a specific policy regarding the role of the States in criminal prosecutions and approaches for improving the coordination with States on criminal investigations and enforcement efforts.

In 1987, the Assistant Administrator for OECM created two Deputy positions in the Office of Enforcement and Compliance Monitoring: one for Criminal Enforcement and one for Civil Enforcement, reportedly in part because the Assistant Administrator believed he needed greater oversight and control over the criminal program. Several events contributed to this view. These included concerns by the program offices about case progression, the death of an EPA Special Agent, and an increased level of interest in the program by Congress. With the establishment of the Deputy Assistant Administrator (DAA) positions, the reporting relationship between the Director of NEIC and Headquarters changed. Although the OCI/NEIC remained organizationally independent of the DAAs, the Director of NEIC was now required to report through the DAAs. The DAAs also assumed authority to approve new hires, promotions (above GS-12) and reorganizations—authorities previously within the purview of the NEIC Director.

During this period, the criminal enforcement program in EPA continued to evolve into a more professional organization. For example, until 1984, none of EPA's criminal investigators had

any law enforcement powers. Accordingly, these agents had no independent authority to execute search warrants, make arrests, or carry a firearm. Without these powers, they were, for example, unable to enjoin ongoing violations of the environmental laws that occurred right before their eyes. In one instance, an agent had no choice but to simply follow a truck that was leaking PCB-laden liquid for 50 miles because he lacked the authority to stop the truck. Instead, where law enforcement powers were needed, EPA's agents had to enlist the aid of agents from other law enforcement agencies.

In 1984, the U.S. Attorney General deputized the agents of EPA's OCI as Special Deputy United States Marshals. However, the deputization was temporary in nature and required regular renewal. By 1988 it became clear that this was inefficient, and the Attorney General recommended that law enforcement powers be conferred directly on those agents at EPA who were responsible for investigation of criminal violations of the environmental laws. Congress conferred this authority as part of the Medical Waste Tracking Act of 1988.

Difficulties persisted, however, in the relationship between OECM/Headquarters and OCI/NEIC, and in 1989 a new Assistant Administrator for OECM requested another management review of the criminal enforcement program by EPA's Management and Organization (M&O) Division. This report concluded that while the criminal enforcement program had become more mature, due in large measure to NEIC's ability to provide a technical support network for the program, the management location in Denver and the dual OECM organizations (NEIC reporting directly to the Assistant Administrator/OECM and through the DAAs) were creating confusion and hampering the effectiveness of the program. The

report recommended a reorganization of the criminal enforcement program and presented several organizational options, along with a number of findings and recommendations for program and process improvements.

**The Pollution Prosecution Act of 1990 and the creation of the Office of Criminal Enforcement**—The M&O review was conducted at a time when a new Administration was placing additional emphasis on environmental protection and the use of enforcement tools. A symbolic example of this was the change at this time in the name of the Assistant Administrator's office from the Office of Enforcement and Compliance Monitoring to simply the Office of Enforcement. The July 1989 M&O report noted that these developments and bipartisan support for the environment and a strong enforcement program could lead to both new environmental legislation with strong enforcement provisions and to additional resources for the program.

In February 1990, a bipartisan group of Senators introduced S.2176, the Pollution Prosecution Act of 1990 (PPA). The purpose of the bill was to provide EPA with the resources needed to enforce the Nation's environmental laws and to ensure that those involved in enforcement receive consistent training. Specifically, the bill called for the hiring of at least 200 criminal investigators by October 1, 1995; provided for an increase of 50 civil investigators by September 30, 1991; authorized the appointment of a Director of an Office of Criminal Investigations who was required to report directly to the Assistant Administrator for Enforcement; created a National Enforcement Training Institute (NETI) to serve as an education institute for criminal and civil environmental enforcement training for Federal, State and local personnel; and authorized funds

to be appropriated to carry out the provisions of the Act. EPA testified in support of this bill in June; it was passed by voice vote in the Senate in August and in the House in October, and presented to the President and signed into law in November 1990.

One of the contributing factors to the PPA's passage was a review of EPA's criminal investigation program conducted by GAO at the request of Congressman Mike Synar, Chairman of the Environment, Energy and Natural Resources Subcommittee of the House Committee on Government Operations. Although the resulting May 1990 GAO report was never officially released to the public, many of its findings and recommendations paralleled those in the M&O study and were used to support passage of the PPA. A further review conducted in 1990 by the Environmental Law Institute at the request of the Assistant Administrator reached similar conclusions about the organizational structure as had the GAO and M&O reports.

The PPA and these reports provided support for the Assistant Administrator to relocate the management of EPA's criminal investigators from Denver to Washington, DC, and to reorganize criminal enforcement within the Office of Enforcement along the lines of one of the options identified in the M&O report. In 1991, the Agency established an Office of Criminal Enforcement, with a Director in Washington, DC, reporting directly to the Assistant Administrator. The office was made up of a Criminal Investigation Division (formerly the Office of Criminal Investigations), with criminal investigators in Washington, DC, and in EPA's 10 Regional offices, and the Criminal Enforcement Counsel Division (formerly the Office of Criminal Enforcement Counsel) and thus combined in its structure both

EPA's investigative and legal resources for criminal enforcement. Administrative and resource management was provided through the Office of Criminal Enforcement's Immediate Office. Earl Devaney, a career agent and manager in the U.S. Secret Service, was selected as the first permanent Director of the new office.

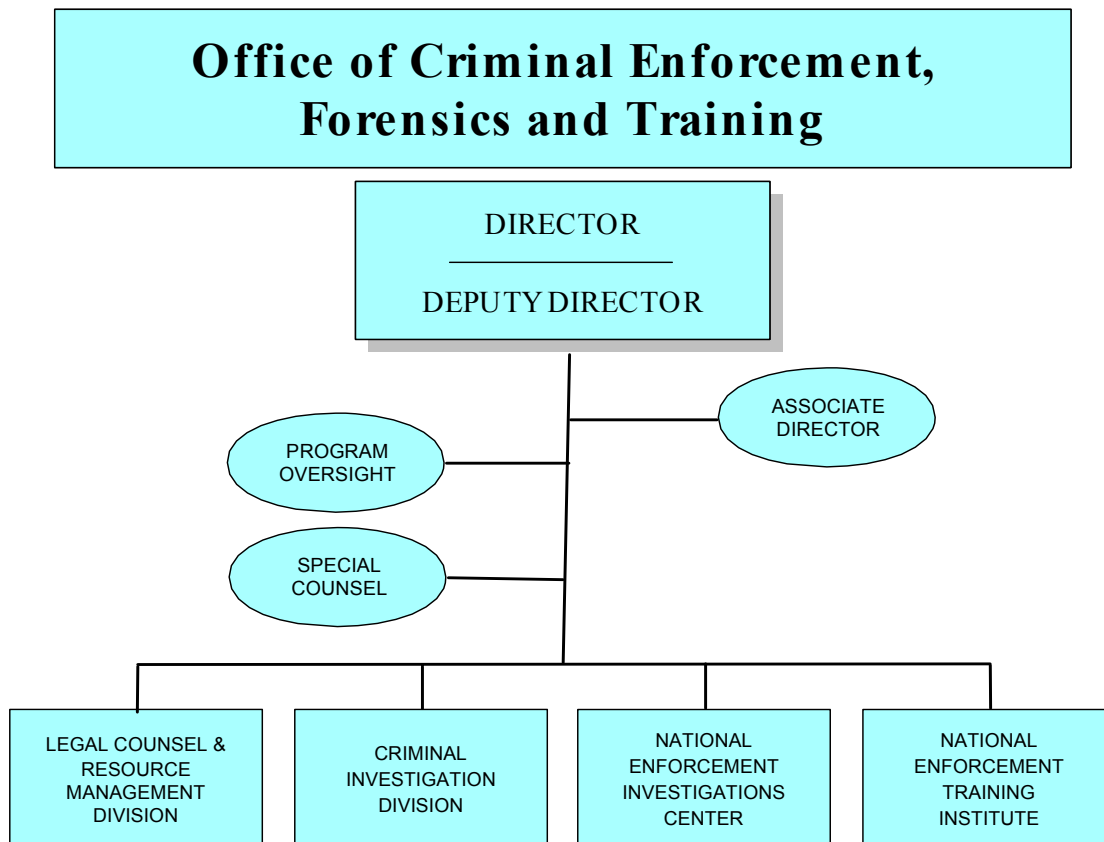
With the relocation of the management of the criminal investigators to Washington, DC, NEIC remained a separate center reporting to the Assistant Administrator. Its Planning and Management Division, Laboratory Services Division and Operations Division continued to provide support to both the civil and criminal enforcement activities of EPA. Also, as provided in the PPA, the NETI was established as a part of the Enforcement Capacity and Outreach Office under the Assistant Administrator.

**Creation of OCEFT**—As provided in the PPA, the Agency began hiring additional Special Agents and establishing new offices throughout the country. In the meantime, 1993 brought the advent of a new Administration. One of its first management initiatives was to reevaluate the organization of enforcement resources within Headquarters. In October 1993, Administrator Carol Browner announced her decision to essentially undo the 1981 Burford reorganization and consolidate enforcement resources in Headquarters back into a new Assistant Administrator office. This resulted in the 1994 establishment of the Office of Enforcement and Compliance Assurance.

The establishment of OECA did not immediately affect either the Office of Criminal Enforcement, NEIC, or NETI, but there was an understanding that the Office of Criminal Enforcement/NEIC relationship would be addressed at a later phase once the main OECA

reorganization was completed. This understanding took the form of an August 1995 reorganization which established OCEFT. This office replaced the existing Office of Criminal Enforcement and consolidated three existing organizations: (1) The Criminal Investigation Division, (2) National Enforcement Investigations Center, and (3) National Enforcement Training Institute. OCEFT combined the legal and administrative functions supporting the criminal enforcement program into a Legal Counsel and Resources Management Division (LCRMD), so that the resulting office consisted of four Divisions reporting to the Office Director. The reorganization package in support of this change

highlighted the creation of OCEFT as a major component of OECA's 1995 Reinvention Plan, and argued that it would strengthen EPA's enforcement and compliance assurance programs by consolidating under the authority of one Director all of the support functions associated with specialized civil and criminal investigations and enforcement. The package also argued that OCEFT would provide a single focus for the Agency's responsibilities under the PPA and that the reorganization would assist EPA in meeting its streamlining target of an 11:1 staff/supervisor ratio. The chart below shows the proposed structure of OCEFT as it was envisioned at the time of the 1995 reorganization, and remains the basic organization of the office today.



### **Current Status and Recent**

**Developments**—The fundamental structure of OCEFT has not changed since the 1995 reorganization. OCEFT continues to be headed by a Senior Executive Service (SES) level Director, who reports to the Assistant Administrator for OECA. It contains an SES-level Deputy Office Director and is made up of four Divisions, each with its own Director and Deputy. Staff in two of the Divisions, NETI and LCRMD, are located predominantly, though not exclusively, in Washington, DC. The third Division, NEIC, is located predominantly, though not exclusively, in Denver. The fourth Division, CID, remains highly decentralized with 90 percent of its staff located outside of Headquarters.

While the creation of OCEFT addressed several organizational issues facing EPA in 1995, interviews with OCEFT staff and managers suggest that the realignment of reporting relationships as well as inherent differences in culture and mission among the Divisions have resulted in an organization that is not functioning as envisioned in the 1995 reorganization. The impact of the changes brought about by the creation of OCEFT has been different for each of the Divisions. For some Divisions, being a part of the OCEFT organization appears to have enhanced their influence, while others believe it has diminished their effectiveness, and for others it is difficult to tell. In addition, the assumption of new missions by OCEFT, especially in the wake of September 11, 2001, has created additional management strains on an organization that already faced significant challenges in meeting the expectations of its core mission.

CID has grown since 1995 from a staff of about 210 located in Headquarters and around the country in 10 Area offices and 21 Resident

offices, to a current staff of 237 (which includes 203 criminal investigators and 34 other staff) in Headquarters and in 16 Area offices, 32 Resident offices and 5 Technical offices. The Director of CID is an SES position; the Deputy Director and Special Agents in Charge (SAC) are GS-15 positions.

Currently, CID Area offices are located in: Washington, DC; Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Chicago, IL; Dallas, TX; St. Louis, MO; Denver, CO; San Francisco, CA; Portland, OR; Los Angeles, CA; Jacksonville, FL; Cleveland, OH; Houston, TX; and New Orleans, LA. CID Area offices are headed up by a SAC and an Assistant SAC and include Special Agents and support personnel. They range in size from 7 to 17, with the Washington and New York Area offices being the largest and the Houston Area office being the smallest (based on agents assigned within their territory and including those based in subordinate Resident offices). Regional Technical Coordinators (NEIC employees) are co-located in several Area offices.

CID Resident offices are headed up by a Resident Agent in Charge and report through an SAC. The Resident offices range in size from a single agent to seven agents. Resident offices are located in: New Haven, CT; Manchester, NH; Buffalo, NY; Syracuse, NY; Trenton, NJ; Wheeling, WV; Nashville, TN; Louisville, KY; Charlotte, NC; Knoxville, TN; Minneapolis, MN; Indianapolis, IN; Albuquerque, NM; El Paso, TX; Kansas City, MO; Des Moines, IA; Helena, MT; Salt Lake City, UT; Sacramento, CA; Honolulu, HI; Anchorage, AK; Baton Rouge, LA; Boise, ID; Baltimore, MD; Phoenix, AZ; San Diego, CA; Tampa, FL; Miami, FL; Jackson, MS; Detroit, MI; Seattle, WA; and Columbia, SC. Of these 32 Resident offices, 9 are staffed by a single agent.



NEIC has gone from a staffing level of about 130 to about 100 since the 1995 reorganization. It continues to function under the supervision of a GS-15 Director. NEIC has a Deputy Director position (currently vacant) and three branches: (1) Forensic Information Technology, (2) Laboratory, (3) and Field Services. Within the Field Services Branch are separate program coordinators for Civil and Criminal Enforcement. NEIC also has Regional Technical Coordinator positions assigned to each of EPA's 10 Regional offices, although three of these positions are currently vacant. There are five Civil Investigators who were originally managed by NEIC and are located in Denver but are now assigned to LCRMD.

The successor to the former Office of Criminal Enforcement Counsel, LCRMD is headed by a GS-15 Attorney-Adviser Director. The Division has a Deputy Director and a Legal Counsel Branch which is responsible for legal and policy matters pertaining to criminal enforcement requirements and the operations of NEIC. The Resources Management Team provides legal, budget, and administrative support for the entire office. LCRMD also manages the five civil investigators discussed above, and has offices in both Washington, DC, and Denver. LCRMD as an organization has been relatively stable since the 1995 reorganization, with the exception of recently assuming responsibility for the five civil investigators.

The fourth Division, NETI, is headed by an SES-level Director and a GS-15 Deputy. NETI provides civil enforcement training at facilities in Washington, DC, and in Denver. NETI also is responsible for the training provided to all incoming Special Agents through EPA's staff and programs at FLETC in Glynco, Georgia. A relatively small organization from its inception,

NETI's extramural budget has decreased since 1995, as pressures on EPA's overall extramural budget have taken their toll on contract support for training and the provision of assistance to regional law enforcement associations.

Earl Devaney left the OCEFT Director's position in August 1999 to become the Inspector General at the U.S. Department of the Interior. His successor was Leo D'Amico, who had been the Director of CID since 1994 and previously had worked for the U.S. Secret Service. His replacement as Director of CID was Nick Swanstrom, who served from 2000 until his resignation in September 2003. NEIC has had the same Director, Diana Love, since 1995; NETI had the same Director, Gerald Bryan, from 1995 until the summer of 2003 when Leo D'Amico transferred into the NETI Director's position. LCRMD has had three Directors since 1995; Ellen Stough has been in this position since 2000.

OCEFT and indeed OECA as a whole experienced lean budget years between 1998 and 2000, including a hiring freeze and reductions to their extramural budgets. However, an even greater challenge was posed by the events of September 11, 2001. In the wake of September 11, OCEFT personnel found themselves involved to an unprecedented extent in activities related to homeland security. Three particular areas posed special concerns: (1) those related to providing protective service to the Administrator, (2) those relating to counter-terrorism activities, and (3) those relating to incident preparation and response.

On September 27, 2001, the Administrator delegated to OCEFT the responsibility for protective services for the Administrator, a function which had never previously received much attention within EPA. This delegation

resulted from a meeting in the wake of September 11 in which the ability of various organizations within EPA to provide protective services was discussed. Since OCEFT had a number of Special Agents who were former Secret Service agents, were authorized to carry firearms, and were already in a dispersed field structure, they were identified as the EPA organization most able to provide additional security for the Administrator relatively quickly. This proved to be a controversial decision both within and outside OCEFT and is discussed in more detail in subsequent chapters.

In addition, following September 11, OCEFT staff began to participate more fully in activities with other Federal law enforcement agencies related to counter-terrorism. This took two particular forms. The Attorney General established Anti-Terrorism Task Forces through each of the 93 U.S. Attorneys Offices, and EPA SACs in their various locations participated in these Anti-Terrorism Task Forces. Second, the FBI established Joint Terrorism Task Forces in 41 locations to anticipate, evaluate, and pursue threats to domestic security. A limited number of OCEFT agents have been assigned full-time duty with certain Joint Terrorism Task Forces—duty which has included investigations of suspected terrorist leads, arrests, and standby duty at such major national events as the World Series, the Super Bowl, and the 2002 Olympics in Salt Lake City. OCEFT has also provided crisis management training and investigative technique training to Federal, State and local law enforcement personnel through its resources at FLETC.

Finally, OCEFT personnel, along with other EPA personnel and staff from many other Federal law enforcement agencies, were involved in the direct response to the September 11 attacks and to the release later that fall of

anthrax spores into the Hart Senate Office Building and the Brentwood Post Office. OCEFT management decided in the wake of these incidents to create a special group, composed of selected Special Agents, known as the National Counter-terrorism Evidence Response Team (NCERT), to provide criminal, investigative and technical environmental crime scene support. NCERT members received special training and equipment to support their entry into contaminated areas for the purpose of evidence gathering. Members of the NCERT were involved along with EPA's On-Scene Coordinators in activities at the Hart Senate Office Building anthrax contamination site.

Supplemental resources were received through the Emergency Supplemental Act of 2002 to support these new activities. However, these supplemental appropriations have not been carried forward into OCEFT's base budget, thus raising questions about OCEFT's future role and mission in the homeland security area. Moreover, while there is no disagreement about devoting all available resources to deal with a crisis like September 11, opinions within OCEFT remain divided about the protective service detail and ongoing preparation and protection activities for counter-terrorism. The fundamental question is how these activities relate to EPA's core mission of preventing, detecting, and deterring environmental crime.

In the last year, controversies about OCEFT's operations have surfaced in articles in the environmental trade press and in the general news media. However, it is worth remembering for perspective that there have been controversies about the role, purpose and structure of criminal enforcement at EPA ever since the Agency's beginning.

This is not surprising. Criminal enforcement is a serious business. To a degree unlike any other form of environmental enforcement it can jeopardize the very lives of those who undertake it, and cause those guilty of environmental crimes to face the unique sanction of being deprived of their freedom. Criminal law enforcement imposes special requirements on agencies, and the culture which surrounds criminal law enforcement, whether Federal, State or local, is quite different from the culture more

characteristic of regulatory agencies like EPA.

The issue for OCEFT, and for EPA, is not whether there is controversy over the implementation of environmental criminal law enforcement. The issue is how that conflict is managed, and whether there are ways to improve that management which will increase the effective use of these special resources on behalf of the Nation's environment. The following chapters will address these questions.

## CHAPTER 2: The Organizational and Management Culture of OCEFT

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*What is the overall condition of the organizational and management culture within OCEFT?*

As noted in Chapter 1, OCEFT is a combination of pre-existing entities, each with a distinct mission and a distinct organizational culture. The degree to which the missions of the four Divisions within OCEFT work together successfully is discussed more thoroughly in Chapter 3. This chapter, however, sets the stage for that discussion by looking at the organizational cultures within OCEFT.

The first step in discussing “organizational culture” is to define what that term means. For present purposes, we rely on the definition employed by Professor Edgar H. Schein in Organizational Culture and Leadership:

Organizational culture is the pattern of basic assumptions that a given group has invested, discovered, or developed in learning to cope with the problems of external adaptation and internal integration, and that have worked well enough to be considered valid, and, therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems.<sup>2</sup>

These assumptions may cover a wide array of subjects, ranging from the appropriate criteria in hiring decisions to the expected level of interpersonal involvement between members of the organization. For present purposes, the most critical sets of assumptions to analyze are those described below.

### 1. Power and Status – What assumptions

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<sup>2</sup>Schein, Edgar H., Organizational Culture and Leadership, p.9, Jossey-Bass, 1985.

underlie the established “pecking order” within the organization?

2. Rewards and Sanctions – What are the criteria for advancement or adverse actions?
3. Decision-making – What assumptions exist governing how management decisions are made?
4. Mission and Objectives – What assumptions govern the basis upon which organizational objectives are defined?
5. Language and Communication – What assumptions exist about how internal communications should take place?
6. Membership – What assumptions exist about the criteria for membership in the culture?

The last of these six items points to two discernable subcultures within OCEFT around which this analysis is organized. The Immediate Office of OCEFT and CID share what can be called a law enforcement culture, while NEIC, NETI, and LCRMD share a culture that is closer to that of other parts of the EPA and its various professional subcultures. The following sections discuss these observations in more detail.

### Power and Status

Many employees within the Immediate Office of OCEFT and CID report that they believe that personal loyalty, rather than organizational loyalty, has long been the principal basis by which the Office Director delegates authority. Many reported their belief that “the pecking order” is also a function of

prior law enforcement experience at the Secret Service or another Federal law enforcement agency. Several people related stories of hiring and promotion decisions from Headquarters that were based primarily, if not solely, on personal connections with Headquarters management. It was not a purpose of this review to investigate these individual reports, but whether or not they are true in all detail, the perception that power and status are a function of loyalty and connections is so widely held that it represents one of the core assumptions on which the organizational cultures of the Immediate Office and CID are based.

NEIC tends to recognize academic and practical excellence due to the nature of its work, most of which involves scientific research, development and analysis. Many of the scientists and other professionals at NEIC are national experts in some aspect of environmental protection, and their findings, recommendations and testimony are crucial to the successful prosecution of many of EPA's civil and criminal cases. In addition, they are at the forefront of developing new methods and tools to assist EPA's monitoring and investigation activities. In general, power and status at NEIC rests less on being in a position of authority over others as on the ability to serve as an authority in a particular subject matter area. The derivation of power and status from expertise in environmental protection also means that staff at NEIC are more likely to have ties to other organizations in EPA than are staff in other parts of OCEFT.

While NETI specializes in environmental enforcement training, many of the instructors are brought in from other parts of the Agency and other law enforcement organizations. Many NETI staff work on curriculum development and other aspects of managing the Institute rather than as full-time classroom instructors. Much of

the power and status in the organization appears to devolve from the traditional management model. Assignments and recognition are primarily driven by management, and authority and responsibility are delegated down from management.

In LCRMD, knowledge and prosecutorial experience have the greatest impact on power distribution. As in NEIC, power and status rest less on being in a position of authority over others as on the ability to serve as an authority in a particular subject matter area. Managers are apt to defer to staff judgment or, at least, solicit input from knowledgeable staffers in almost every decision. This is due, in part, because LCRMD is relatively small, and the Division has wide-ranging responsibilities, where staff have developed expertise in a particular area of law, policy, or administrative process. Among the legal staff, those with courtroom experience are often in the best position to answer legal process and strategy questions that regularly surface within the Division, and, accordingly, there is a general sense that they are first among equals.

### **Rewards and Sanctions**

As noted above, there exists a general perception within much of OCEFT that personal loyalty is a major factor in individual power and status. This includes rewards such as hiring and promotions, and sanctions such as unfavorable performance reviews or professional neglect. This perception is evident in the adaptive rather than confrontational strategies that many field personnel employ when dealing with the Immediate Office. For example, agents would borrow needed gear from the FBI before pushing Headquarters harder for these items. News of widespread discontent within the office surfaces in the press before it is raised through the management chain. Those few who have

directly confronted Headquarters management complain that they have been the victim of retaliatory decisions (e.g., in funding or transfer requests). Indeed, many individuals who were interviewed for this report sought assurances that their comments would be presented without attribution because they feared similar retaliation. Whether or not these perceptions are justified, they are sufficiently widespread that they appear to reflect an aspect of the office culture.

The centralized nature of decisions about awards in OCEFT leaves many managers feeling that they have little control over what behaviors get rewarded or sanctioned. This seems to be a disincentive to both staff and management, who believe that officials in Washington, DC, whom they have met at best infrequently, will make decisions on recognition of their work. It also makes it difficult for them to determine what kind of behavior will and will not be rewarded.

As mentioned above, some staff, while not fearing “punishment,” expressed concerns during our interviews about “retaliation” by management if management were to find out what they said. This applied not only to the interview team. There seemed to be a general sense among many members of the organization that one always had to be careful what was said to anyone, that if staff expressed their opinions openly and candidly it would have a negative impact on their career or working environment. This creates a sense of insecurity, lack of trust, and discomfort in the organization which can adversely affect morale and productivity.

### **Decision-making**

Decision-making within OCEFT is perceived to be highly centralized, authoritarian, and occasionally arbitrary. Field office

personnel frequently complain of micro-management by Headquarters with regard to hiring, promotion and equipment requisition. This extends into aspects of investigative work, including decisions regarding search warrant applications and requests for consensual monitoring. Personnel throughout the office almost universally complain that the decision-making process is not only centralized but also opaque—decisions are rendered without explanation or justification and communicated summarily by memo, often leaving staff wondering whether the stated basis for a decision is the true one. This perception is so widespread that it seems ingrained in Headquarters management culture.

The reverse side of this perception is an implicit belief by Headquarters staff that field personnel must be monitored closely to ensure conformance with Headquarters policy and direction. The underlying anxiety behind this belief is that field personnel, left to their own devices, will pursue activities which are not very important, fail to produce accomplishments which meet Headquarters objectives, or engage in activities inappropriate to a criminal enforcement program. A striking degree of lack of trust seems to flow in both directions.

Field offices, while still organized hierarchically, generally exhibited a more informal and egalitarian style of decision-making. Agents, like staff-level personnel in other Divisions, often arrive at decisions and recommendations through informal consultation with each other. While these decisions often require managerial endorsement, the hierarchy in most field offices is relatively flat and, therefore, less imposing. Moreover, some aspects of fieldwork, including, for example, the execution of search warrants, demand an ordered but fraternal style of decision-making. Indeed, the

more egalitarian style of decision-making in the field may partly explain why many agents chafe against Headquarters management. It is also ironic that while Headquarters has retained control over many seemingly smaller matters related to budget and procurement, profound decisions such as whether a criminal case should be pursued in a specific instance are largely within the discretion of field SACs.

NETI, NEIC, and LCRMD all appear to utilize more collaborative decision-making processes. For example, programmatic decision-making in NEIC is conducted by a matrix management approach wherein all managers in the organization discuss priorities and work allocation. NETI works collaboratively with other OECA Headquarters offices, the regional enforcement programs, and State and local partners and customers to determine which courses to offer, where to offer them and curriculum development priorities. By comparison, LCRMD decision-making is relatively centralized; but, as noted in the discussion of power distribution, expertise plays such a large role in the decision-making process that the organizational hierarchy, while present, seems to be not particularly imposing.

### **Mission and Objectives**

The perceptions that exist within the office about how Headquarters management shapes objectives and ideology reveals the full measure of discontent within the ranks. Many employees believe that leadership in OCEFT has pursued an agenda aimed at personal advancement and the justification of SES status and other promotions for a favored few. These goals were believed to be part of the reason why NEIC and NETI were merged into OCEFT, and why OCEFT accepted homeland security and protective service detail responsibilities when resources were already

stretched thin. While this view is not universally held, it is perhaps as widely held as it is because Headquarters management assumes that the rationale for establishing and pursuing the objectives it sets are self-evident.

As discussed in greater detail in Chapter 6, most OCEFT staff, especially in CID, believe that the core mission of OCEFT is the investigation of environmental crimes—homeland security and protective security detail activities are generally viewed as ancillary. The core missions of NEIC, to be an environmental enforcement scientific center, and NETI, to be a training institute, seem to be fully understood and appreciated by staff and managers within those organizations. However, they do not believe that OCEFT senior management understands or fully supports their particular missions, especially to the extent they serve civil as well as criminal enforcement.

LCRMD is different from the other Divisions in that its mission is defined largely by the legal and administrative demands of the Immediate Office and CID. Still, LCRMD has taken ownership of this role insofar as it occasionally asserts itself when the Immediate Office has not sought counsel but should have. The Division also sees itself as responsible for voicing a policy perspective on legal and regulatory matters that affect the criminal enforcement program. LCRMD's philosophy is that the long-term interests of the Office are best served by providing conservative or risk-averse counsel. With regard to particular enforcement cases, this philosophy translates into legal counsel often calculated principally to avoid adverse case law. This same philosophy translates into aggressive counsel regarding development or revision of Agency regulations that have the potential to adversely affect criminal enforcement of media programs.

## **Language and Communications**

As noted above, decision-making in the Immediate Office and CID management at Headquarters is widely viewed as opaque. This style of decision-making seems to assume that, in a law enforcement organization, it is important only that information flow up the chain-of-command and decisions flow down. Moreover, there is a high value attached to confidentiality in communications, to the point where secrecy is given a very high value in the organization.

An example may illustrate the point. One agent we interviewed was adamant that information about the status of a case should never be shared with the civil side due to a need to protect the investigative function and grand jury information. Although this is absolutely a legitimate concern, the example he used to justify his concern was a case from 1993 where EPA administrative staff mistakenly disclosed to a company an imminent visit by EPA criminal investigators pursuant to a search warrant.

Instead of using this as an opportunity to engage in a discussion of the need for secrecy to support certain aspects of the criminal program with the need for engagement with the civil side, staff in this particular criminal program isolated themselves to an even greater extent. When asked whether this kind of disclosure had ever happened again, the agent could not cite another instance, but firmly believed that what had happened in 1993 should govern the behavior of his fellow agents in 2003. Not surprisingly, in this same office senior managers on the civil side acknowledged the importance of the criminal program but characterized criminal agents as preferring to stay far away from them while competing for the same pool of resources.

Again, it is easy to see why secrecy should have a high value in protecting individual privacy and promoting effective criminal law enforcement operations. The risk, of course, is that this value can be applied even when it is unnecessary, and where opacity in decision-making can be interpreted as an unwillingness to reveal the true basis for a decision. For this reason, there exists within OCEFT an expansive informal communication network of stories—whether truth or fiction—that teach new employees about how decisions are “really” made. The result is that many employees assume that formal communications are not the whole truth and that secrets underlie many of management’s decisions.

The reestablishment of trust through open and clear communications about why critical choices are made about missions, priorities, and funding is widely believed to be the most critical leadership issue facing OCEFT, even more than funding issues. While communications will not take care of funding shortfalls, people will better understand the situation and rationale for funding decisions if they are clearly presented and explained. Staff and Division level managers feel they do not get the full story behind decisions, are not consulted in the decision-making process, and are expected to follow through without sufficient guidance. Given better communication between senior management and the rest of the organization, better understanding of ideology and objectives can be achieved.

## **Membership**

As noted above, many in OCEFT perceive that those who came to CID from the Secret Service and who had personal connections to senior OCEFT managers belong to a favored group. However, there is a larger and more



significant cultural divide within CID that is also widely recognized. This divide exists between agents who come to CID with a law enforcement background and those who come with a background in environmental science, law, or policy. While an oversimplification, there appears to be a tendency for those who come from a law enforcement background to focus primarily on indictments, convictions, and jail time, while those who come from other backgrounds are, on the whole, more focused on deterrence and environmental harm.

Membership in groups usually carries with it particular obligations and benefits. This is especially true for series 1811 criminal investigators in CID. Although these obligations and benefits are not distinctive as compared to other series 1811 employees within the Federal government, they are very distinctive within EPA. The obligations include specialized training in criminal investigative procedures, the possibility of very hazardous duty, with unpredictable hours and in remote locations (for example, in a stakeout), and the special responsibilities that go along with the authorization to carry official firearms. In exchange, Special Agents receive premium availability pay, are eligible to retire after 20 years of service, and have individual government owned vehicles at their disposal.

To those within EPA but outside of OCEFT, it can seem that the distinctive features of membership in the criminal law enforcement community create stronger bonds between EPA's Special Agents and the rest of that community than exist between the Special Agents and the rest of EPA. We observed this in interviews when some agents referred to "the agency" and meant the Criminal Investigation Division, not the Environmental Protection Agency. If not actively addressed by the organization's leaders,

this perception can exacerbate a sense of isolation between CID and other parts of EPA.

As noted above, NEIC has a scientific mission and thus membership in its organization is frequently based on being a member of the scientific community through educational background, or providing support to the scientific community. This is true also of the Training Institute. LCRMD is similar insofar as its attorneys share a common educational background and, in many instances, a background in criminal litigation.

### **Equal Employment Opportunity and Organizational Culture**

EEO issues in OCEFT exemplify many of the aspects of the organization's overall culture. We heard in our interviews that the perceived lack of equal employment opportunities has been a contentious issue in recent years within the organization, especially concerning promotions of criminal investigators.

According to EPA's Office of Civil Rights (OCR), of a total of twenty one formal complaints of discrimination were filed with OCR by employees within OECA from January 1998 thru September 30, 2003. Fourteen complaints were filed by OCEFT employees between FY2000 and FY2003. (Three employees filed multiple complaints). A majority of the complaints appear to have been filed by criminal investigators. Of these fourteen complaints, six have been dismissed; one complaint was settled; and seven remained open as of September 30, 2003. Seven of the complaints were filed with "race" as a claimed basis; three of these complainants were minority employees (African American and Hispanic), and four complaints were filed by Caucasians. Of the fourteen complaints, two complaints cited

gender (female) as a claimed basis. Nine of the complaints named the OCEFT Director as the Responsible Management Official. We also heard that a larger number of administrative grievances have been raised informally, and that a class action suit by white male criminal investigators is being considered.

With respect to workforce statistics, OECA has approximately 936 employees. There are approximately 420 employees in OCEFT. There have been a disproportionate number of complaints filed within OCEFT when the AA-ship is compared to other similarly sized program offices within Headquarters. In terms of representation, women are significantly under represented among criminal investigators in EPA (16 percent of all 1811 series personnel as compared to 40 percent of the civilian labor force).

OCEFT has responded to concerns about fairness within the organization by appointing a Special Agent in Charge of Cultural Diversity, Recruitment and Development in the Immediate Office in March 2002. Interviewees expressed some confusion about the position's precise role.

It is beyond the scope of this review to assess the merits of any individual complaint. The point of this discussion is the light it sheds on aspects of OCEFT's culture. These statistics plus our interviews suggest that the culture is a relatively litigious one as compared to the rest of OECA. The centralized control of decisions on hiring and promotions means that most complaints are aimed at the OCEFT Director. Both minority and non-minority personnel have filed formal complaints. Some minority employees have alleged discrimination in hiring and promotion, and believe that they must constantly "prove themselves" to their non-minority managers and counterparts. Some non-

minority male agents have alleged reverse discrimination, feel that their years of loyal service are not being recognized, and resent what they see as preferential treatment afforded to women and minorities.

Some managers within OCEFT also believe that there is an ineffective approach to addressing poor performance. They believe that their efforts to do so are routinely met with threats to sue for discrimination. They also believe that senior managers' response to these threats was to resolve them by promoting agents who threatened to file grievances, leading to comments like one by an agent who observed that "to get promoted around here, you really have to screw up."

EEO and fairness issues are difficult for many organizations and have been controversial across all of EPA. However, elements of the OCEFT culture have made these issues even more challenging, especially with regard to criminal investigators. The belief that power is centralized in a hierarchical decision-making structure fosters the suspicion that allegations about improper personnel practices might be true. Limited communication of the rationale for key decisions and a lack of transparency in the process by which these decisions are reached has reduced confidence in the integrity of those decisions. The authoritarian element of law enforcement culture appears to have produced a tendency on the part of managers to rely on a directive style in making personnel decisions, one which may not work as well in dealing with employees from a different generation with different attitudes about the nature of work. The fact that investigators are familiar with litigation procedures may make them more willing than other employees to pursue formal complaint options. Finally, notwithstanding the number of recent complaints that have been dismissed,

there appears to be a persistent belief in the organization that complaints will in effect be rewarded, and that top level managers will not sustain disciplinary actions by first line supervisors in the face of threats by employees to file an action against them.

## **Conclusions**

OCEFT appears to be a conglomerate of units with different purposes in different locations. As a result there is no single OCEFT culture. Instead, there is a different culture within each of the Divisions. To the extent any single pattern dominates, it is the law enforcement orientation of the Immediate Office and CID. However, the differences between these organizations and LCRMD, NEIC and NETI have produced conflict ever since OCEFT was created in 1995. While this has resulted in some creative tension, it has also resulted in barriers among the different units of OCEFT and between OCEFT and the rest of EPA.

Recent human resource initiatives in EPA have emphasized cross-program and cross-media experience to overcome the “stovepipe” culture which has long been characteristic of the Agency as a whole. Yet many in EPA still perceive much of OCEFT as part of a different agency. The organizational and management culture of OCEFT has much to do with this perception. Parts of OCEFT, especially CID, have elements in their culture that while common to other law enforcement agencies are unique within EPA. These elements include a relatively authoritarian structure, personal loyalty as an organizational norm and a basis for power and status, a relatively insular career track, special responsibilities and privileges, and a tradition of secrecy (reinforced by the need for privacy in criminal investigations) and relatively opaque decision-making. All are at variance with the

dominant culture of EPA, which is egalitarian and sometimes painfully transparent, with most loyalties being to professional subcultures (*e.g.*, attorneys, engineers, scientists) or to particular programs (*e.g.*, air, water, Superfund) rather than individuals. It is not surprising that, taken as a whole, much of OCEFT appears largely self-contained, with relatively little contact with the rest of the EPA.

Internally OCEFT appears to be struggling between different imperatives in its work. There is a legitimate need for confidentiality in parts of its operations. Elements of law enforcement do require quick, authoritative decision-making by responsible officials. Personal loyalty and trust in these circumstances can be life and death matters. Because bad criminal enforcement has repercussions which go far beyond EPA, there is a legitimate need for strong central control and responsibility. To be effective, criminal investigators and those who support them need to speak the language of their potential allies in the law enforcement community. However, each of these strengths can become a liability if they are applied in situations where they are not appropriate. Legitimate confidentiality can become unnecessary secrecy; personal loyalty can become cronyism; the language and community of law enforcement can cause a loss of focus on the distinctive mission of EPA.

To answer the question posed at the beginning of this chapter, this review suggests that while there are strengths in OCEFT’s organizational and management culture, there are elements which have gone awry. There are substantial differences between the cultures of the Immediate Office and CID on the one hand and NEIC on the other, with LCRMD and NETI residing somewhere in between. The new leaders of OCEFT face a tremendous challenge in building a culture which retains the strengths

of the organization while correcting some of its less productive characteristics.

## **CHAPTER 3: Structure and Utilization of OCEFT Resources**

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*Is the current structure and deployment of OCEFT resources optimal for effective utilization?*

OCEFT is made up of an Immediate Office and four Divisions. Staff in three of the Divisions, LCRMD, NEIC, and NETI, are predominantly located either in Washington, DC, or in Denver. The fourth and largest Division, CID, is very decentralized, with about 90 percent of its staff located in 16 Area offices, 32 Resident offices and 5 Technical offices around the United States.

This chapter is divided into three parts. The first describes the mission and structure of each organization and how these missions are linked to each other. The second deals specifically with the deployment and management of resources. The third contains conclusions and recommendations on ways to more effectively carry out these functions in support of the Agency's overall mission of protecting human health and the environment.

The most sweeping recommendation is that the Assistant Administrator of OECA and the next Director of OCEFT strongly consider a reorganization of OCEFT which would return to a structure similar to the Office of Criminal Enforcement as it existed prior to the consolidation with NEIC and NETI in 1995. In brief, it appears from our review that benefits of combining the various functions now in OCEFT have not materialized as expected at the time of the formation of OCEFT, in part due to inherent conflicts in the missions of the component parts of the organization. In general, CID and LCRMD should be contained in a single office level organization, and NEIC and NETI should be separated. We also recommend that the new Director of the Office of Criminal Enforcement streamline functions in the Immediate Office;

establish revised, objective criteria for the deployment of both human and fiscal resources; consolidate strategic oversight of field operations in 10 Area offices which are co-located with EPA's Regional offices; institute a regular and systematic national review of Area office performance; and decentralize management of resource execution to give Divisions and Area offices more operational flexibility.

### **PART 1—MISSION AND STRUCTURE**

#### **Immediate Office**

The Immediate Office of OCEFT provides program direction, policy, oversight and communications functions one would normally expect in an Immediate Office. These functions should serve the needs of the four Divisions of OCEFT. However, because of their structure and staffing, many now seem to serve primarily the needs of CID, homeland security initiatives and the protective service detail. Several of these positions are filled by management level criminal investigators (1811 series) who are expected to provide the broad perspective necessary to serve the entire organization. The management overhead and grade structure in the Immediate Office seem disproportionate to the overall size of the organization, particularly since the administration and resources management function is not in the Immediate Office.

#### **Criminal Investigation Division**

The mission of CID was affirmed in the 1990 PPA, which required that EPA hire a minimum of 200 criminal investigators by

October 1, 1995 to investigate environmental crimes. From a baseline of 55 Special Agents in 1990, EPA ramped up to over 200 Special Agents in 1998. While Special Agent staffing levels have fluctuated since then, the criminal enforcement program currently has a total of 221 Special Agents, with 203 agents and 34 support staff in CID and an additional 18 agents in other parts of OCEFT.

Since the September 11 attacks, CID staff have taken on additional missions beyond the investigation of environmental crimes, most notably the protective service detail and NCERT. These activities have placed additional demands on EPA's Special Agents. While additional resources were provided to OCEFT through the Emergency Supplemental Act of 2002, these additional resources have not been carried forward into OCEFT's base budget for 2004. However, the Agency has provided some redirected resources to this effort.

To carry out their mission effectively, criminal investigators need adequate equipment, analytic support, legal support, administrative support and collaborative working relationships with EPA Headquarters and Regional offices, States, and U.S. Attorneys Offices. It appears from our review that the best collaboration between CID and the rest of EPA occurs when CID SACs are co-located with EPA's Regional offices. This allows for frequent contact and sharing of information at the management level about strategic goals and initiatives. Co-location does not guarantee success; we found examples of broken relationships among offices in the same building. There are also good examples where Area offices have accomplished this kind of collaboration without co-location. However, in general, information sharing appears to require less effort and work best when Regions and Area offices are co-located.

Of the 16 current CID Area offices, 8 are co-located in the same city with EPA Regional offices. In Regions 7 and 10, the Area office is located in a different city from the EPA Regional office. Four of the ten EPA Regions have two CID Area offices; Region 6 alone has three Area offices. All of the Area offices outside of EPA Regional office cities have been established since 1997.

The question of where the field leadership of CID should be located is different from the question of where agents should be deployed. This topic is discussed later in this chapter.

**Equipment, Training, Facilities**—EPA must ensure that the safety of its personnel is a paramount concern, and providing adequate training and equipment should be a funding priority. Our review revealed claims that agents were not receiving all of their basic FLETC training in a timely manner, and that some recently hired senior level investigators were not required to take the basic environmental law course. We also heard reports of agents without adequate equipment (*e.g.*, bullet-proof vests, computers, communications equipment) to carry out their mission. In addition, information technology support to the Area and Resident offices is uneven at best. Without adequate and timely training and equipment, the Agency is jeopardizing the safety of its agents and hindering their ability to successfully investigate environmental crimes.

There is also inconsistency in the quality of facilities in which the Agency houses its agents. This can create difficulties in working with other law enforcement agencies and have a negative effect on morale. In response to the questions about their greatest resource needs, most CID personnel we spoke to cited equipment, specifically up-to-date computers and

communications equipment.

Many of these problems are budget driven, and will be discussed in a later section of this chapter. As a general principle, however, CID staff believe that the Agency should not hire agents that it cannot afford to properly train, equip, and house.

**Analytic Support**—Analytic support for the agents is inconsistent around the country. Some Area offices are highly dependent on NEIC, some rely heavily on State laboratories or those of other Federal agencies, and some look to the EPA Regional environmental services labs for support. Most agents rely for analytical support on a combination of these resources, in effect, on whatever they can make work at minimum cost.

This inconsistency creates difficulties for EPA. The Agency cannot have a fully credible criminal investigation program without consistently providing essential analytical support. Agents and prosecutors seem to have been creative in working around this inconsistency. For example, CID recently established, at great cost, its own National Computer Forensic Laboratory at the Jacksonville Area Office because of frustration getting timely and unrestricted access to the Computer Forensics Lab at NEIC. In our review, we were unable to find examples of where this situation had caused a case to fail at trial. The problem appears to be more subtle—that of cases which are not even attempted because of the lack of available analytical support.

While almost everyone interviewed agrees that current analytical support is not adequate, there is disagreement about how this should be addressed. Ideas suggested include having a dedicated lab do all but the most complex

analytic support (which would continue to be done by NEIC); requiring NEIC to do only criminal analytic support, thus changing the overall mission of NEIC; allocating specific resources to Regional environmental services labs to provide routine analytic support to CID; or providing CID Area offices with funding to acquire lab support as needed.

**Regional Technical Coordinators**—In addition to the analytic support needed, NEIC has a staff of Regional Technical Coordinators who provide support to CID field agents. Regional Technical Coordinators have different roles across the country, and vary from being co-located with Area offices and pulling samples, to being located in Denver and providing technical support, to being located in the Region and providing a coordinating function with other technical experts. Area and Resident offices also vary in their use of the Regional Technical Coordinators based on their location and needs. The most effective use of the Regional Technical Coordinators appears to be their co-location in large Area offices to provide the technical support needed by agents in the field, and to facilitate the coordination between the agents and the lab(s). If additional external funding were provided for analytical support to agents, the Regional Technical Coordinators would be indispensable in ensuring that this funding was used effectively and that appropriate care was exercised in the collection, tracking and analysis of evidentiary samples.

**Administrative Support**—In addition to facilities, equipment, training, and analytic support, adequate administrative support is needed if the Agency is to ensure that agents have what they need when they need it to get the job done. As noted above, since 1990 CID has grown from 55 to over 200 Special Agents, and opened new Area and Resident offices around

the country. Information on the number of administrative support staff over this same time period is less readily available; however, it appears that relatively few positions have been added for administrative support for the agent positions. While with adequate computer support some administrative functions can be carried out by agents, and existing administrative support staff are working hard to meet these needs, there are still many administrative functions, such as procurement, finance, personnel, facilities and equipment management and office support, which under sound principles of position management should be carried out by professional administrative staff. This would enable CID to use its 1811 series Special Agents for criminal investigative work, yet still carry out administrative functions more efficiently and with less fiscal vulnerability.

**New Missions**—Although organizationally housed in the OCEFT Immediate Office, the homeland security and the protective service detail functions call on the resources, skills and expertise of agents in CID as well as those hired specifically to carry out these new responsibilities.

**Homeland Security**—Since September 11, 2001, EPA has played a significant role in the Nation's homeland security efforts. EPA has knowledge, expertise and authority under environmental statutes for emergency responses to natural and man made (*e.g.*, chemical, biological) disaster situations, and for threats to the Nation's water infrastructure. EPA, like all other Federal departments and agencies, is currently working with other Federal, State and local agencies to better define and coordinate its role in homeland security. For EPA, this includes integrating this expanded mission into our core mission of protecting human health and the environment. In addition, EPA needs to

address the resource implications of this expanded mission on our core mission and make clear decisions about the reallocation of core program resources, or successfully obtain additional resources for this expanded mission.

OCEFT's homeland security activities are guided by the homeland security staff in the Immediate Office, but are mostly collateral duties of CID agents. For example, the head of the homeland security program in OCEFT is also the SAC of the Washington Area Office.

During 1997 to 1998, NEIC developed a Counter-Terrorism Response Team to work with other Federal and State agencies to respond to chemical and biological terrorist threats. This team now provides civilian technical threat assessment support to OCEFT's NCERT, which was created after September 2001 to provide criminal investigative and technical environmental crime scene support at sites of actual or potential terrorist incidents. Both of these groups received specialized training to respond to terrorist threats and continue to participate with other law enforcement agencies in counter-terrorism preparedness exercises and National Special Security Events. OCEFT staff have also provided training for other law enforcement officials on responding to chemical and biological and water infrastructure threats.

In addition to the Counter-Terrorism Response Team and the NCERT, CID also has assigned nine agents, eight of them full time, to FBI Joint Terrorism Task Forces assessing national, transborder, transnational and international threats to domestic security.

These and other homeland security activities can be found in the EPA Strategic Plan for Homeland Security, September 2002. In Fiscal Year 2002, Congress enacted supplemental



appropriations to cover the Agency's new homeland security resource needs. These supplemental levels have not been carried forward in future budgets. EPA faces the question of whether continued support for these activities should be funded through redirected resources from within the Agency.

Most CID staff interviewed during this review recognize the unique skills and expertise EPA brings to homeland security and believe that much of the training and equipment received by NCERT members can also support the core mission of investigating environmental crimes. However, there is great concern about whether EPA truly has the ability to execute this new mission in the expansive terms in which it has sometimes been described by OCEFT leadership. Many staff also believe there has been poor communication about CID's appropriate role in the homeland security mission, and how it affects CID's ability to carry out its core mission. There is concern about spending resources on new training and equipment when many agents feel they are underequipped, have delays in training and are poorly housed for carrying out the core mission of investigating environmental crimes.

***Protective Service Detail***—One of the most controversial new missions which OCEFT undertook in the wake of September 11 was to provide protective security for the Administrator. As noted in Chapter 1, while not altogether new to EPA, protective service had never been provided previously by OCEFT Special Agents and never to this degree for any previous Administrator. OCEFT took on this mission during a time when many agents already believed that the Agency was not adequately providing for their core mission of investigating environmental crimes.

Initially, OCEFT senior managers relied on some of their existing agents with Secret Service backgrounds to organize a protective service detail. As time passed, OCEFT hired a small core group of full-time agents, housed in Headquarters, with background and training in protective service to take the lead for this mission. However, the mission also required regular CID Special Agents, trained for environmental criminal investigations, to perform protective service for the Administrator with little specific training on how to perform the task, and in many cases without having what they considered to be basic equipment (*e.g.*, radios for communication, emergency lights on the cars).

Further difficulties resulted from a perceived misunderstanding of roles and between CID agents and the Administrator's advance team and support staff over expectations for the agents. Efforts by the protective service detail leadership to address this (*e.g.*, the list of "do's and don'ts") came across as condescending and inappropriate, and many agents saw their activities as serving to expedite travel by the Administrator through airport or other event security more than providing true protection. The result was that many agents felt they did not understand why they were being asked to participate in protective service, how it related to the core mission of the criminal enforcement program, and what management was willing to give up in terms of investigative work for field agents to carry out this mission. There was a general feeling that Headquarters did not understand the impact of protective service on workload and morale.

This review was not charged with looking at individual stories about the protective service detail. What we heard in our interviews was that while there were varied individual experiences, in general, agents' attitudes about the protective

service detail were independent of their personal feelings about the Administrator. Many agents felt that regardless of their beliefs about protective service, it was nevertheless a mission and their duty was to perform it professionally. However, there was considerable concern, especially in offices that were frequently responsible for protective service, about the adverse resource impact of the detail on the core mission. There were also reports of favors, such as promotions or preferred postings, being offered to agents who functioned effectively as part of the detail.

It is widely believed that OCEFT senior management sought the protective service function because they felt it would increase their visibility with the Administrator and enhance their ability to get additional resources for the program. Senior managers themselves argued that OCEFT was the organization in EPA best qualified, equipped and trained to carry out this mission. Whatever the truth of either belief, it appears that OCEFT leadership failed to persuade many agents that protective service was mission-critical, and to align expectations with the Administrator's Office on just what the role of the agents should be. This led to dissatisfaction in the ranks which became public through a Public Employees for Environmental Responsibility report issued earlier this year. We found that response to protective service varied somewhat from office to office, based on how frequently field agents were required to do it. For example, Philadelphia agents were reportedly called on 20 times for the detail, but in offices such as Cleveland or Portland, this responsibility was infrequent and the impact on work and morale did not appear to be as great.

### **National Enforcement Investigations Center**

The NEIC develops and implements

innovative techniques, practices, and procedures; devises specialized methods and/or technical field applications; and transfers these capabilities to Federal, State, and local environmental enforcement and compliance assurance programs. NEIC is the first environmental forensic center in the country to be accredited by the National Forensic Science Technology Center for its environmental measurement activities in field measurements/monitoring, field sampling, and laboratory measurements. While there appeared to be widespread agreement by other parts of OCEFT and EPA, U.S. Attorneys, and other law enforcement organizations about the high quality of staff and work performed by NEIC, which leads to successful prosecutions and settlements, there was not consensus on what the role of NEIC should be or who should set its priorities.

The intensity of the value conflict that has resulted from NEIC's location within OCEFT cannot be overstated. On the one hand, many in NEIC believe they should operate independently of CID and that while CID is an important customer, they are only one of many. On the other hand, agents within CID believe NEIC should be their lab and they should be the primary customer, setting unquestioned priorities for NEIC work. This is in part because, as discussed above, EPA has not consistently provided resources for analytic support for criminal investigations other than in NEIC. This conflict is exacerbated by battles over resource levels, competing priorities, multiple customers and, to some extent, conflicting cultures as discussed in Chapter 2. Many agents and some U.S. Attorneys Offices stated that analyses and reports from NEIC, though of high quality, took too long and hindered the quick resolution of criminal cases. A comment by one agent which exemplified the feelings about this lack of alignment was that NEIC would take six months

to produce a 30-page report, but all the agent and the prosecutor really needed for the case was the two pages of data in the report.

### **Legal Counsel and Resource Management Division**

LCRMD provides three distinct functions within OCEFT. First, the Legal Services Staff provide attorney support to the Immediate Office and CID. Second, LCRMD houses a team of five civil investigators. And third, LCRMD's Resource Management Staff provides human resources management, contracts, grants, procurement, budgeting, finance, and facilities support to all of OCEFT.

Combining such diverse functions is an unusual organizational arrangement. It appears that the primary reason for placing the Legal Services Staff and the Resource Management Staff in a single division was to create a desired staff to supervisor ratio. Further complicating management is that both legal counsel and resource functions have staff located at multiple facilities across the country. Some of this dispersal resulted from the evolution of earlier organizational and functional structures and some is a result of recent management decisions.

Although the resource management function seems to be well understood and well managed at present, another approach would have been to make the Resource Management Staff part of the Immediate Office, as is the case in other OECA headquarters offices. Under this alternative organization, Legal Counsel would remain a separate division, enabling greater management focus while ensuring that it retains the independence needed to provide objective legal analysis. As discussed in greater length in Chapter 4, the role of both Headquarters legal counsel and the Regional Criminal Enforcement

Counsels (RCEC) may need to be redefined or clarified in the course of addressing problems with the existing referral process.

Another structural curiosity within LCRMD is the presence of the five civil investigators mentioned above. Not surprisingly, there exists a great deal of confusion about why these *civil* investigators are housed in an office that does *criminal* investigation. This confusion is apparent from conversations with these staff who, on the whole, seem to lack direction and leadership as they have been passed from one part of OCEFT to another three times within the last few years. It appears that the most effectively used civil investigator has been one assigned to a Regional Office, precisely because the Region provides the needed direction. However, even where efficient use can be made of these investigators, it remains unclear why they should be housed within an office that does criminal investigations.

### **National Enforcement Training Institute**

NETI provides training for Federal, State, local, and tribal enforcement professionals, such as lawyers, inspectors, civil and criminal investigators, and technical experts, in the enforcement of the Nation's environmental laws. NETI has campuses in DC, Denver, and Glynco, Georgia, at the Federal Law Enforcement Training Center (FLETC). In addition, NETI provides on-site training at EPA Regional and State and local facilities and has experimented with internet and satellite training. Many of the NETI staff feel that its small budget and staffing level put it at a disadvantage when competing for the attention and support of senior management in OCEFT and OECA. Like NEIC, the mission of the Institute is broader than the criminal program, although FLETC is dedicated specifically to criminal enforcement.

The role of national compliance and enforcement training is clearly important to both the civil and criminal enforcement program and deserves strong management support. However, it appears that the 1995 decision to locate NETI within OCEFT was as much a function of personalities and the desire to streamline reporting to the Assistant Administrator as of any sense that this reporting relationship would enhance NETI's effectiveness. This observation does not question the hope of management at that time that some synergy would develop from this relationship, but it is difficult to find much evidence that this has happened in the intervening years.

## **PART 2—MANAGEMENT AND DEPLOYMENT OF RESOURCES**

### **Resource Deployment**

To carry out a national criminal investigations program, resources must be deployed in ways that maximize their time, skill and effectiveness. This means being located where the crimes are, where there is support from a U.S. Attorneys Office, and where there is support from other parts of EPA and other law enforcement officials at the Federal, State and local levels. This pattern of resource deployment is consistent with other Federal law enforcement agencies.

The need for auxiliary support is especially important for EPA's criminal investigators. EPA has relatively few criminal investigators in contrast to such agencies as the FBI, with 11,000 agents, the Secret Service, with 4,000 agents, or even the U.S. Fish and Wildlife Service with 900 agents. One consequence of this fact is that EPA's criminal enforcement agents must build effective partnerships to be successful in their work. They must leverage their resources with

other law enforcement agencies, both civil and criminal, to be effective in pursuing environmental crime.

To achieve this, OCEFT has opened Area and Resident offices in various locations around the country. However, there does not seem to be a consistent set of criteria used to determine where to place an office, what size it should be, how many support staff are needed, and what the needed skill mix and experience of agents in the office may be. This lack of a consistent set of criteria has left the staffing of Area and Resident offices open to charges that it is based on personal lifestyle and location preferences rather than an analysis of need.

There is a widespread belief that OCEFT has been opening offices that were inadequately equipped and staffed in the hopes that if an office were established, additional funding or staffing would follow. A striking example is that one "Resident office" consists of a post office box, and was set up even though the Area office, which staffs its functions, is less than 60 miles away. In another case, an Area office, staffed with a SAC, an Assistant SAC, and an administrative specialist, opened in 2002 in a city 80 miles away from a pre-existing Resident office with seven agents and no administrative support and inadequate facilities. This Area office was the third Area office in this Region, more than in any other EPA Region. In a third case, a Pacific Rim Environmental Resource Center was established in Honolulu, but no office space had been provided for the operation.

Supporters of these actions can argue about their merits, but they have contributed to the belief in the organization that at least some decisions about where to open offices are based less on program need than on other considerations, such as the ability to provide

promotion or relocation opportunities for individual staff. These beliefs undermine the ability of even the best agents and managers to function effectively.

One justification used by CID in establishing Area and Resident offices is the relationship with U.S. Attorneys Offices in particular jurisdictions, or the need in dealing with U.S. Attorneys or other Federal law enforcement agencies to have an office led by someone with the title of “Special Agent in Charge.” Certainly, these are important relationships. It is desirable to have U.S. Attorneys Offices requesting investigator support and seeking to prosecute environmental crimes, and rewarding offices that seek to do so is good policy. However, using this as the sole criteria for establishing offices and deploying resources has drawbacks. It makes EPA’s resource allocation decisions reactive, more dependent on the personalities of U.S. Attorneys and their staff than on a clear sense of mission and purpose. It subjects the program to significant variations as turnover occurs among U.S. Attorneys. Finally, it diverts the program’s focus from addressing significant environmental crime; however, that needs to be done, as opposed to looking to venues of convenience where prosecutors happen to be willing to take cases.

It is unlikely that EPA will ever have sufficient criminal investigator and support resources to provide for fully staffed criminal investigation offices in all 93 U.S. judicial districts. Moreover, while the relationship with U.S. Attorneys and other Federal law enforcement agencies is important, it is no less important that good communications and relationships be maintained with EPA Regional staff who provide critical support to CID in sampling, leads, regulatory interpretations, case screening, and most importantly for the future,

development of integrated enforcement strategies. The multiplication of Area offices has led to confusion and uncertainty for Regional Administrators over who is the single point of contact for leadership of the criminal enforcement program in their Region.

Some of those interviewed for this review were skeptical about the effectiveness or even safety of Resident offices staffed by only one or two agents. There was general agreement that the potential for ineffectiveness in such assignments existed, and that stationing an inexperienced agent in such a position would be cost-ineffective and potentially hazardous. On the other hand, other SACs and individual agents in such positions defended their effectiveness so long as certain criteria were met in making such assignments. These criteria included the need for an “isolated” agent to be (1) experienced in conducting environmental criminal investigations, (2) skilled in forming alliances, (3) committed to staying in touch with Area office management, (4) well aligned with Federal and State prosecutors, (5) located in an area where the potential for significant environmental benefits from criminal investigations were possible, and (6) credible in representing the Agency in one-on-one encounters.

To a much lesser extent, staff for NETI, NEIC, and LCRMD are located at multiple locations around the country, grouped primarily in the Washington, DC, area, Denver, Colorado, and Glynco, Georgia, with other personnel co-located with CID personnel in other cities.

### **Resource Management**

One of the most frequently heard concerns during our interviews was lack of funding. This came from all levels within the organization and from all parts of the organization. Lack of

adequate funding is not unique to the OCEFT, but has exacerbated other issues within the organization, such as the taking on of new missions in homeland security and protective service. During the mid-1990's, OCEFT struggled to meet the congressionally mandated level of agents, at the expense of adequate support staff and dollars. Once those positions were filled, the additional support for them never materialized.

Salary and benefits continued to increase because of inflation, and while staff increased and new missions were added, extramural support dollars actually went down. Between fiscal years 2000 and 2003, as new missions were taken on, OCEFT's full-time equivalents (FTE) increased by 14 while extramural support dollars decreased by 38 percent. For comparison, over the same time period extramural spending for the rest of OECA went down by 19 percent. Making resource management decisions in this kind of an environment while trying to maintain a strong program and take on new missions is challenging at best. And while all programs in OCEFT lost extramural buying power, the training program was hit harder than the others, with extramural resources down 57 percent (see Appendix 2).

OCEFT currently retains strong centralized management of resources in the Immediate Office. This makes it difficult for managers in the field, including NEIC (an organization with more than 100 staff, including SEEs and contractors), to manage their programs effectively. Currently all major purchases require approval by the Immediate Office, as well as all personnel actions for an organization of over 400 people. This creates delays, allows Headquarters managers to micro-manage their outlying organizations and is demoralizing to staff and managers in the field.

There has also been substantial controversy within CID over the purchase of equipment as well as travel and training costs associated with homeland security activities. Many field agents believe that these expenses have detracted from the Division's ability to adequately fund costs associated with traditional enforcement of environmental crimes or even to provide funding for such basic equipment as up to date computers and communications devices. The availability of supplemental appropriations resources to offset the equipment, travel and training costs of both homeland security work and the protective service detail is not well understood by field agents, and it has been difficult for them to distinguish between austerities imposed by the general Agency challenges in covering higher personnel compensation and benefits costs and the purchase of new, specialized equipment and training associated with such programs as NCERT. Now that the supplemental appropriations resources have been largely consumed, agents are concerned that continuation of these missions will even further erode resources available for the core environmental crimes mission.

This concern is compounded because in an age of fast paced technological advances, programs such as forensics science, training and criminal investigations need to constantly update their equipment and techniques if they are to maintain their effectiveness.

### **Recommendations**

#### **3.1. The next OCEFT Director should review and streamline the functions of the Immediate Office.**

The purpose of this review should be to determine the appropriate staffing level and

revisit the existing grade structure. This review should consider whether to consolidate and streamline some of the Immediate Office functions. In addition, the review should examine all 1811 series positions in the Immediate Office, and in the front office of CID, to determine if the requirements of the positions are such that only an 1811 series employee can perform the function. The review should identify how these specialized, high-cost positions can be used for investigative functions, while other qualified staff in less expensive job series are used to carry out non-investigative functions.

### **3.2. Criminal investigation should be the chief component of an office-level organization within OECA.**

Due to the size of the current Criminal Investigation Division (with over 230 FTE in over 40 locations across the country), the specialized nature and scope of its work, its unique contribution to the Agency's mission, and unique working relationships with U.S. Attorneys and other law enforcement organizations across the Nation and internationally, criminal investigation should be the chief component of an office-level organization within OECA. This would allow appropriate focus by senior management on this critical program. Its structure would be similar to the Office of Criminal Enforcement which existed between 1990 and 1995.

### **3.3. NEIC should be separated organizationally from CID.**

Placing NEIC in an organization dominated (both in terms of FTE and dollars) by criminal investigations has created an impossible conflict of missions. Since NEIC supports civil and criminal cases, it should be returned to an office

level within OECA to better serve all of its customers. This will continue to require difficult choices about how NEIC should allocate its limited resources. This function will require increased attention by the OECA Assistant Administrator and Deputy Assistant Administrator. It will also not eliminate the need for NEIC to provide support to the criminal enforcement program, especially in complex cases. In addition, NEIC needs to do additional work to better align itself with both its civil and criminal customers and be responsive to their needs, to avoid projecting an elitist image which will undermine its long-term effectiveness. Finally, this recommendation will only be successful in conjunction with the recommendation in this chapter for OECA to develop a more systematic program for providing needed analytical support for criminal enforcement investigations.

### **3.4. Legal and resources management support should be retained in a restructured criminal enforcement office.**

Consistent with Recommendation 3.2. to reestablish an office-level structure similar to the past Office of Criminal Enforcement, legal support within that organization should be retained either as a separate Division or as a staff in the Immediate Office. In addition, the resource management staff should be a staff office reporting directly to the Office Director.

### **3.5. Civil investigators should be transferred to the civil enforcement program.**

Since the restored Office of Criminal Enforcement would be focused on criminal enforcement only, OECA should consider where to organizationally and physically locate the civil investigators. One recommendation, based on our observations and interviews, would be to

house them with the civil enforcement resources located in the Regional offices, since that is the program they support. This would open the lines of communication and strengthen the civil investigative function as well as the overall civil enforcement program.

**3.6. CID should consolidate leadership responsibilities for its field units in a single Area office for each Region, co-located with the EPA Regional office.**

This recommendation does not mean that all existing “Area offices” should be closed, and it is not the intent of this recommendation to affect the grades of existing SACs. However, there needs to be a single individual who is responsible for the criminal enforcement program in each Region, including responsibility for utilization of criminal investigative resources throughout the Region. This individual should serve as the point of contact for Regional Administrators and other SES-level Regional enforcement leaders. This individual should also be responsible for strategic coordination with the civil and administrative enforcement and regulatory programs in the EPA Regional office, with the assistance of the RCECs.

**3.7. CID should develop specific criteria to make determinations about where to place an office and what the staffing level and skill mix should be for that office.**

Such criteria should include, among other factors, (a) an analysis of industry compliance in the area, (b) potential or real environmental and human health risk, (c) willingness of the U.S. Attorneys Office in the area to prosecute environmental crimes, (d) access to other EPA resources for assisting in investigation, and (e) OCEFT resources to support adequate staffing, housing and equipping and providing

administrative support for the office. Analytical work in support of such an effort is underway; this work should be completed and used by the new Director to conduct a thorough review of the deployment of resources, especially 1811 series agents, with the objective of realigning limited resources to be able to address the most egregious environmental offenses.

**3.8. NETI should be transferred to the Office of Compliance.**

This recommendation is consistent with other recommendations on restructuring OCEFT. With the exception of FLETC, discussed below, NETI would be more appropriately housed and supported in the Office of Compliance. The Office of Compliance already devotes significant resources to developing training materials, delivering training and providing funding for training to States. This consolidation of mission would strengthen both the NETI program and the training program in the Office of Compliance and make better use of existing knowledge, network and infrastructure for supporting the program.

**3.9. The FLETC program should be retained in the Office of Criminal Enforcement.**

FLETC is a highly specialized program for training new criminal enforcement agents in both procedures of criminal investigation which are common to all Federal law enforcement agencies, and in the particular matters of criminal environmental law. There are benefits to having common criminal law enforcement training experiences with other Federal agencies which the Glynco facility provides.

However, FLETC needs to strengthen that portion of its training which teaches agents about the relationship between CID and the rest of



EPA. While this is covered, our interviews suggest that it is not stressed enough, with the result that agents are not given a good grounding in the history and culture of EPA. This is especially true for employees whose first job is with CID or those who come to CID from other law enforcement agencies—groups which represent the majority of CID employees. The absence of this understanding contributes to the sense of isolation which agents have from other EPA staff, and is a barrier to developing more integrated compliance and enforcement strategies.

It is also true, though beyond the scope of this report, that other EPA employees would benefit from additional training in the mission and role of CID. As the new Director of OCEFT assumes responsibility, it would be worth consulting with other leaders in EPA about how this gap could be addressed and how the organization might engage in more effective outreach to the rest of EPA.

### **3.10. The Office should develop staffing plans for all of its component units.**

At this time, a staffing plan for OCEFT as a whole does not exist, and the office uses its telephone book in lieu of such a plan. We understand development of a staffing plan is underway and commend the OCEFT office for taking this first step. This staffing plan should reflect the realignment of resources described in previous recommendations, and this information should be shared with all employees. To the extent necessary, this plan should also be developed in consultation with the appropriate unions.

### **3.11. Management of resource execution within OCEFT should be decentralized.**

While budget formulation and oversight of execution are appropriate functions for the Immediate Office, execution of the enacted budget, both FTE and dollars, should be allocated to and managed by the Division Directors (the Director of CID and NETI are both SES employees). A process for Division management participation in the development of the budget request and allocation of enacted resources should also be developed and used. Earlier recommendations in this chapter about reorganizing OCEFT would address many of the inefficiencies observed in the current processes used for resources management.

In addition, OCEFT should review whether they need to establish additional ways to provide agents and technical support staff with quick and easy access to equipment and services needed to carry out their mission more efficiently, without increasing fiscal vulnerability.

### **3.12. The Agency should revisit how it implements protective service for the Administrator.**

The Agency should revisit the decision on what level of protection is needed and how to provide it. Some areas for consideration besides leaving it in OCEFT or OECA might be having the function housed in (a) the Administrator's Office, (b) the Office of Administration and Resources Management (which has responsibility for security for Agency staff and equipment), (c) the Office of the Inspector General (which previously performed the function), or (d) contracting out the function. Whatever the Agency decides, it should fund the service above and beyond the core mission of criminal environmental investigations, provide adequate training and equipment for those conducting it, and make every effort to minimize the effect of protective service on the work of

Special Agents who are investigating cases.

**3.13. OCEFT should revisit its role in homeland security to determine the appropriate balance between the core mission of investigating environmental crimes and homeland security.**

Given the resource levels available and the unique responsibilities of the CID program, OCEFT faces a similar dilemma as the U.S. Internal Revenue Service (IRS) faced at the time that the IRS criminal enforcement program was reviewed by William Webster in April of 1999. The Webster Report noted that the IRS Criminal Investigation Division was investing significant resources into fraud and narcotics cases in which the specialized investigative skills of the Division were certainly valuable. However, the Webster Report noted that these activities pulled resources away from the IRS's core mission—the investigation of wilful tax violations. Since no other agency was prepared to fill this investigative gap, the diversion of resources resulted in weaker enforcement of the tax laws. Certainly, many, if not most, of the fraud and narcotics cases that the IRS investigated had a

tax component, but the report reasonably questioned whether the addition of tax charges to a narcotics case did anything to deter regular tax crimes. The report concluded that while it was reasonable for the IRS to continue to play a role in these fraud and narcotics cases, the level of participation should be more closely linked with the measure of reimbursement received for its involvement, so that its participation in these cases would not consume resources that would otherwise be available for pursuit of the Division's core mission.

Like the agents in the IRS Criminal Investigation Division, EPA's agents have specialized skills that are of value not just in the investigation of environmental crimes, but in other types of crimes and in providing homeland and protective security. Yet, as noted in Chapter 5, after September 11th, it is increasingly the case that general law enforcement agencies like the FBI and State and local law enforcement agencies have had to concentrate their resources on homeland security. Accordingly, it is increasingly the case that if OCEFT does not investigate criminal environmental activity, no one else will.

## **CHAPTER 4: Management Process Changes**

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*Are there Management Process Changes which could contribute further to the strategic direction of OCEFT and the effective oversight of OCEFT Resources?*

Like any large organization, OCEFT uses standard management processes to direct and monitor the work of its different components. The purpose of this chapter is to assess whether there are improvements which could be made to these processes which would help the organization function more effectively. This chapter will focus on five such processes: case referrals, strategic planning and management, field review and oversight, communications, and human resources. Fiscal resource management is another such process but has already been addressed in some detail in Chapter 3.

### **The Case Referral Process**

EPA does not have the ability to prosecute its own cases but must request that the U.S. Department of Justice (DOJ) prosecute the case and seek an indictment leading to a trial in Federal District Court. The formal means by which EPA makes such a request is to refer the case to either the local U.S. Attorneys office or through DOJ's Environmental Crimes Section. The document which conveys this request for prosecutorial assistance is known as a referral, and it is one of the outputs consistently tracked and reported by OCEFT and OECA management.

The referral is the mechanism by which to solicit the active participation of a prosecutor. This may involve compelling witness testimony before a grand jury, arranging immunity for witnesses, solicitation of a formal decision by a prosecutor or to simply recommend that a prosecution move forward. Referrals are not needed for assistance with the preparation of

search warrants or to obtain grand jury subpoenas for documents nor should they be used to obtain routine declinations for cases that EPA would not otherwise recommend for prosecution. Simply stated, the purpose of the referral is to (1) provide a synopsis of the violations alleged and supporting documentation, (2) alert the prosecutor to legal issues which may affect the case, generally accomplished through a legal analysis provided by the RCEC, (3) provide a Letter of Referral to the prosecutor requesting his/her active involvement in the pursuit of a prosecution, and (4) commit EPA to a prosecution in the matter alleged.

Initially, the referral document originates in the Area office of CID and the SAC must agree to any decision to seek prosecution in a case or to devote additional resources to further an investigation. The referral package is drafted as a team product by the agent working the case, who is responsible for the technical and evidentiary component of the referral, and the Regional Criminal Enforcement Counsel, who is responsible for the legal analysis. Once the package is approved by the SAC, it is sent to the Director of CID and the Director of LCRMD, both of whom must approve the package. The final formal referral memorandum is then forwarded to the appropriate U.S. Attorney or State Prosecutor.

In fact, the process does not always work in such a structured manner. In practice, before the referral is initiated, the agent has usually already met with the prosecutor to discuss the merits of the case and the probability of a successful prosecution. These initial conversations are

often the true place where a decision is made to pursue or to decline a case. For this reason, agents interviewed about the referral process frequently expressed frustration about its usefulness since the referral may be produced after the important decisions about a case have been made. In fact, the backlog of reviewing referrals at the headquarters level can be so significant that a referral may be signed by the Director of CID after a conviction or even the sentencing in a case. In those situations, no formal referral letter is sent to the U.S. Attorney, and the referral becomes strictly an internal document.

While the principal Headquarters managers of the referral process, the LCRMD Senior Counsel to the Criminal Program at Headquarters and the SAC of the CID Investigations Branch, seemed to be personally held in high regard by agents, the utility of the referral document and its role in the process of successfully prosecuting a case was not. At the same time, Assistant United State Attorneys (AUSA) with whom we spoke indicated that they found value in the referral if the document provided them with a road map of the case and assistance with the complex statutory framework of environmental law. A referral as a prosecutorial tool prepared to assist the U.S. Attorney may be welcomed by prosecutors.

In the initial informal review of the case between the Agent and prosecutor, the U.S. Attorneys office often has considerable potential leverage over the types of cases that Area offices will bring forward. If a case is indeed promising and the relationship between the Area office and the U.S. Attorneys office is productive, the U.S. Attorneys office may be well along in the development of a case by the time the “formal” referral request catches up to the informal process.

Though some agents view the referral as it now exists as a trivial document or a checklist for Headquarters, a contrasting view holds that the referral document and its review are needed to preserve issues of national consistency and prevent legal errors which could jeopardize not only the particular case but larger national issues in environmental law. In this view, the informal referral process lacks any meaningful vetting and, accordingly, AUSAs may have to sort through disorganized and incomplete facts, complex statutory or regulatory issues, and policy matters that should ideally be handled by RCECs, LCRMD, and OCEFT management.

A related concern that was expressed by many RCECs was that OCEFT review of the referrals is not completed in a timely manner, leading to a perception that the review of referrals was not helpful to the final submission of a case to DOJ. The value of the preparation of the document in the field may be lost if the absence of timely review makes it a less potent tool for the ultimate prosecution of the case.

Several AUSAs commented to us that an immature referral that is submitted to Headquarters simply to get credit for a case is not useful. U.S. Attorneys understandably have little interest in referrals that are not ready for successful prosecution, or for the feeling that they are part of a process to simply assist EPA in recording statistics.

There is an inevitable tension between investigators and prosecutors in case development. The stereotype, of course, is that prosecutors want the perfect case, where the accused is clearly guilty and the crime is easy to explain to a jury, while investigators believe they have clear evidence of criminal behavior and if only the prosecutors were more aggressive this behavior could receive the punishment it

deserves.

Most professionals in the field understand this tension. When we posed this question in interviews, most agreed that environmental crime can be especially challenging, because the statutes are complex and criminal liability may be hard to establish. Nevertheless, these tensions can frustrate the field agent who conducts an investigation, the RCEC who is charged with providing legal support for the case in development and the Headquarters LCRMD attorneys who feel that by the time they see the referral document it is too late to provide meaningful input. Worse, if once a referral is completed the U.S. Attorney declines to prosecute, it further frustrates field agents who believe their investigation has been thwarted due to circumstances beyond their control.

The referral process seems to be most effective when it provides real analytical depth in a timely fashion. This may mean that SACs will need to screen cases according to strategic guidance provided by Headquarters so that fewer referrals need be written, allowing the RCECs and LCRMD to produce higher quality products in a shorter time. As noted in Chapter 6, this type of revision to the referral process would effectively mean that OCEFT could not rely as heavily on the referral to be both the measure of activity (bean count) and the analytical tool for the factual and legal underpinning of a case.

Although some agents indicated that they would like to see the referral document eliminated, it is not clear whether this would be in the best interest of the organization from the standpoint of oversight and tracking of investigative and prosecutorial activities. Instead, a critical assessment of the referral process should look at whether the referral can help lead to successful prosecutions and if so,

how. Among other things, this assessment should review how the relationship between investigators and prosecutors has changed.

What is clear is that no one is happy with the referral process as it now exists. The assessment discussed above could help in determining who the customer for the referral is. Once the customer is known, a better sense of expectations for the document could be established by senior management. This would allow for greater consistency in the content of the document, the scope of review and the need for the referral to present a clear investigative and legal analysis.

### **Strategic Planning and Management**

OCEFT developed a 5-year Strategic Plan for the years 2002 to 2006. In addition, SACs have been tasked with developing, in conjunction with EPA Regional offices, strategic plans for their activities. We reviewed samples of these plans from the Area offices in New York, Philadelphia, Jacksonville, Portland and Washington. They appear to represent a promising effort by these offices to coordinate their activities more closely with overall Agency priorities. This timing could be fortuitous, as Regional offices are now involved in developing Regional plans under the umbrella of the recently revised EPA 2003 strategic plan.

Still, much work remains to be done, both by CID and by the rest of EPA. The first task will be for CID planners and planners in the rest of EPA to learn to speak the same language and understand each other's processes. Both groups could benefit from each other. OCEFT could benefit from greater access to a wide variety of environmental data available in Regional offices. Regions could benefit from better understanding of the unique tools at the OCEFT's disposal.

These partnerships will take time to develop. For example, the current OCEFT Strategic Plan emphasizes homeland security, especially how OCEFT will support the DOJ and the FBI. However, there is only a single reference to supporting homeland security activities in the rest of EPA, and that is about NEIC.

Much of OCEFT's work, especially in CID, remains largely reactive. It will require a significant leadership commitment by all parties to realize greater benefits from coordinated planning. To do this right will require that SACs have a role in Regional enforcement planning and a concurrent commitment by Regional Counsels and Regional Administrators to involve the criminal program in planning decisions.

Implementation of a strategic vision for OCEFT will also require a more effective division of responsibilities between the Director of OCEFT and the Director of CID. Our interviews suggest that this relationship has been a source of conflict in recent years, extending across individuals in ways that are not simply a function of personalities. While the Office Director will always have overall responsibility, this role requires a strong external focus, building strong relationships with other EPA organizations, other Federal law enforcement agencies, and outside stakeholders. While external awareness is also important for the Director of CID, this position has a particular internal responsibility to oversee and support field agents and ensure that agents have the necessary resources and tools to do their job. There is plenty of work for both positions, and both Directors must work as a team to articulate a consistent vision for the criminal enforcement program and promote integrated planning and direction. Many agents believe that these two positions have not been working together properly, and the apparent disconnects between

senior management at Headquarters produced considerable uneasiness among agents in the field.

### **Field Review and Oversight**

There seems at present to be little structured process by which CID conducts oversight of field operations, other than the review of enforcement statistics and individual criminal cases that come up as referrals. When a personnel crisis comes up, the SAC for Professional Responsibility and Integrity, or one of the other Immediate Office SACs, may be dispatched to conduct an internal inquiry. However, this is very different from a structured regular review of operations in the Area offices.

Reportedly, Earl Devaney traveled regularly to the Area offices. However, his successor traveled much less. We heard in many interviews that this absence hurt morale and increased the sense that Headquarters was not concerned about activities in the field. A response to this concern was that lower level staff were more responsible for getting into the field to meet with agents. Field staff appreciated these visits but they were not the same as on site visibility from the leadership of the office.

Beyond just the physical presence of the Director, there seemed to be no instrument for gauging the progress of individual offices against organizational goals, other than traditional activity indicators (*e.g.*, cases initiated, referrals, prosecutorial outcomes) and the review of individual transactions.

The merits of individual activity measures are discussed in more detail in Chapter 6. The larger consideration is that management must establish some meaningful method of accountability, especially in an area as sensitive

as criminal enforcement. The absence of systematic oversight can lead to either of two troublesome management outcomes: either neglect or ignorance of activities in the field, or a system which relies for control on centralized review and approval of every field transaction. As noted earlier in Chapters 2 and 3, OCEFT has tended to rely on the latter approach. The problem is that this approach fosters a lack of initiative while field managers wait to see what activities the centralized control system will approve, and in the meantime play it “safe” by focusing on known, conventional measures and indicators of success.

CID staff expressed a great desire for higher visibility by Headquarters management in the field. At the same time, SACs strongly defended their somewhat autonomous role as a manager and ultimate decision-maker regarding investigations and case development. Field agents wanted senior OCEFT managers to be aware of the challenges and significance of their investigations as they develop, but did not have quite the same appreciation of the need for oversight and consistency.

Finally, given the sensitivities of criminal law enforcement, we learned of no provision for outside peer review of the overall operations of CID. Other than a study of the referral process conducted by a former DOJ prosecutor, this review (and the Inspector General report conducted this summer) appear to have been the first “outside” reviews of criminal enforcement activities conducted in many years. In contrast, NEIC has followed a strikingly different approach, becoming the first environmental forensic laboratory in the country to receive accreditation from the National Forensic Science Technology Center for its environmental measurement activities.

## Communications

We received consistent reports which suggested that communication was one of OCEFT’s greatest challenges. Given the geographic dispersion of OCEFT, the organization has relied heavily on memoranda, newsletters and conference calls to disseminate information. While these are certainly useful tools, it appeared to us that these mechanisms have not been fully effective. Several SACs referenced their belief that existing conference calls do not serve as effective forums for the raising and resolution of organizational issues. In the past, national SAC conferences served to assist with communications, but this seems to have become less effective in recent years. We were told several times about a nonproductive meeting between the SACs and OCEFT leadership at the most recent conference in Philadelphia, October 21-25, 2002. A SAC conference was planned for April 15-17, 2003, in San Antonio but was cancelled due to lack of funds.

The consequence of this lack of communication is a sense of alienation by managers and staff from both their leadership and from each other. In one interview, following a discussion of the Headquarters management climate (which this SAC described as “dysfunctional” and “toxic”), we asked which peer this SAC admired the most. The SAC thought a moment, then replied, “I don’t know a whole lot of them.”

As best we could determine, there has not been a conference to which all of the CID Special Agents were invited in many years. This stands in contrast, for example, to EPA’s On-Scene Coordinators, another group within the Agency which operates very independently. The On-Scene Coordinators meet annually to

exchange information, hear from senior leadership, and learn more about their mission and each other.

## **Human Resources**

Career development, particularly within the CID structure, is a subject of great discord. As a general rule, the agent population is a pool of relatively young, well trained men and women hired as 1811 series criminal investigators. Their backgrounds are varied. An analysis which we conducted for this review showed that of EPA's current Special Agents, 53 percent came to EPA from another law enforcement agency, 34 percent have an educational background in law enforcement, 20 percent have an educational background in environmental science, and 38 percent have an educational background in some other area, including Public Policy, English, History, Psychology, or Sociology. EPA's agents are trained as environmental investigators at FLETC and generally assume that promotions will be a part of their career development.

At present, there is substantial distrust of the process now used by OCEFT for hiring and promotions. This distrust has led to a situation fraught with rumors, suspicions of preferential treatment, and a lack of respect for the organization and leadership based on perceptions about how things are done.

These concerns are not unique to OCEFT. Many organizations deal with hiring and promotion practices that are less than ideal and not as transparent as they should be. That said, OCEFT appears to have a high level of conflict around this issue, to the point that individual stories illustrating alleged improper promotion and hiring practices abound within the organization. This extends as well to questions

about the deployment of agents to certain locations, where some staffing decisions about Area and Resident offices appear to have been made on a case-by-case basis to accommodate personal lifestyle and location preferences rather than an analysis of need.

The clearest remedy for this situation is the establishment of clear, consistent procedures for hiring, promotions and transfers. Such procedures, implemented consistently and fairly, would dramatically improve morale in the organization.

## **Recommendations**

### **4.1. OCEFT should assess the value of the referral process to see what kind of process is needed to meet management needs.**

This should involve an analysis of the significance of the referral, clear expectations of the timeliness and quality of documents generated within the organization, and a consideration of its value to U.S. Attorneys. In particular, OCEFT should examine how referrals could be used to communicate a strategic vision to prosecutors as a way of leveraging scarce prosecutorial resources and maximizing the appeal of EPA cases to prosecutors.

### **4.2. OCEFT should continue efforts to conduct strategic planning and integrate its work with other parts of EPA.**

This will be a difficult task, as it will require work to rebuild relationships and open communications with other parts of EPA from which OCEFT has long been isolated. Its benefits, however, could allow both OCEFT and other EPA resources to significantly leverage each other.



#### **4.3. Roles should be clearly distinguished between the Director of CID and the Director of the new office.**

To be successful, the head of the new office should have as a top priority the rebuilding of relationships between the office and the rest of EPA. It will continue to be appropriate for there to be a CID Director or equivalent, headed by an 1811 series SAC, to exercise management oversight and leadership responsibility for the criminal investigation program nationwide. The Office Director, however, must have a complementary focus—to look across EPA as well as the Federal, State and local law enforcement community for opportunities to build strategic partnerships to make the most appropriate use of EPA's limited criminal investigation resources in pursuit of the mission of reducing environmental crime. Establishing an appropriate Division of roles and responsibility between these two leadership positions will be a top internal challenge facing the new leaders.

#### **4.4. The Director of OCEFT and the Director of CID should visit field locations and meet with staff on a regular basis.**

To better open lines of communication, personally recognize individuals and their work, and hear from the front lines, the Office Director should visit Denver and the Area offices of CID at least once a year. The Director of CID should visit the Area offices at least once a year and Resident offices every other year. Direct contact will allow management to offer first hand its vision and guidance as well as get input from staff on direction and policy. OCEFT is not so large an organization that its leaders should not be able to have direct contact with all of their staff. Both Directors should also make particular efforts during these visits to meet with

senior leaders of EPA's civil enforcement programs in the Regional office, and participate actively in regular OECA Senior Management Forums.

#### **4.5. In addition to field visits, OCEFT senior management should continue to look for other means to improve communication.**

Over the years, OCEFT has tried various means to improve communications and provide opportunities for two-way discussions between management and staff. These need to be continued and reemphasized. For example, SAC conferences should be held twice a year, and become forums for discussion of national issues, significant cases and issues that need to be addressed in the relationship with Regional civil personnel. If at all possible, a national meeting of all Special Agents should be held at least every other year.

Many from within and outside CID believe there is an unnecessary element of secrecy about activities and decisions within the Division. Open and transparent communication, to the greatest extent possible, with each other and with partners with whom the organization depends to successfully carry out its mission will go a long way to improve morale and productivity.

#### **4.6. OCEFT, especially CID, should develop an explicit review protocol for conducting oversight of field operations.**

Similar to what is done by OECA in visits to EPA's Regional offices, this protocol could be applied in conjunction with visits by the Office Director, to provide a structure for conversations about the conduct of activities in the field and a more professional and informed basis for evaluative judgments about both operations and personnel.

**4.7. OCEFT should engage an independent organization with experience in Federal criminal law enforcement to conduct an audit of its criminal enforcement program.**

Such an audit could yield insights about the operation of this program which are beyond the scope of this review, build confidence with outside groups, and ensure that the professionalism of this critical part of the organization is maintained and expanded.

**4.8. OCEFT should establish consistent and explicit policies for hiring, promotion, and reassignment within the organization,**

**including decisions to move agents or create Area or Resident offices.**

This will take time but it will be a worthwhile investment to rebuild confidence in the motives and intentions of management. It will not resolve all complaints, but will establish ground rules to rebuild trust that such decisions in the organization are fairly made. This should include a more explicit discussion of expectations within the organization for career development and advancement.

## **CHAPTER 5: Links to EPA and Other Criminal Justice Organizations**

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*How well defined are OCEFT's links to the mission and organizations within EPA and relevant Federal, State and local criminal justice organizations?*

Healthy linkages both within OCEFT and with organizations outside of OCEFT are critical to the effectiveness of the office. Linkages with the U.S. Attorneys Office and DOJ are especially important, as they collectively prosecute almost all of the cases that OCEFT develops. Ties to Regional office staff, State and local law enforcement, NEIC, and other Federal agencies also play an important role in the successful development and prosecution of an environmental case. Management is responsible for ensuring that these relationships remain strong.

A strong inter- or intra-agency relationship has three basic characteristics. First, such a relationship is characterized by open, clear, and timely communication of expectations and needs. Second, both parties to the relationship must provide timely and meaningful support to the other in order for the relationship to remain mutually beneficial. Finally, some mechanism must exist to systematically identify and resolve problems that threaten the relationship. The absence of any of these three elements can create a broken relationship, to the detriment of effective criminal enforcement of Federal environmental laws.

While strong relationships exist between some components of OCEFT, and between OCEFT and EPA's partner agencies, many of those interviewed in the course of this management review report that good relations with internal and external entities depend on the personalities of the individuals involved or an immediate coincidence of interest. Where interests diverge or personalities conflict, broken

relationships have persisted for months or even years. As detailed below, this has produced inconsistent relations internally within OCEFT and externally with other agencies.

### **RELATIONSHIPS CRITICAL TO OCEFT'S CORE MISSION:**

#### **Investigative**

**Area Offices**—The leadership of OCEFT cannot successfully communicate and pursue any strategic vision for criminal enforcement in the absence of a strong relationship with CID Area offices because only through these offices can any such strategic vision be pursued. Unfortunately, many of the interviewees reported that this relationship has suffered in recent years. As described in greater length in Chapters 2 and 4 of this report, field personnel believe that Headquarters management does not communicate changes in policy or personnel at Headquarters, the impetus for these changes, or their rationale in a timely or frequent manner. Moreover, many Area and Resident office personnel feel that communication is often one way.

As a consequence, field personnel report that Headquarters involvement in Area office affairs is frequently unhelpful. For example, some Area offices report that Headquarters investigative "initiatives" relate poorly, if at all, to the type of cases that are available for development. Many of these same Area offices complain that although Headquarters demands cases that fit within the scope of ongoing "initiatives," it is unable to provide basic

equipment and resources that are needed for safe and efficient investigation, and micro-manages such things as search warrants and consensual monitoring requests.

These conflicts appear to have persisted for a long time. Area offices believe there has been little real opportunity in recent years to collectively raise, discuss, and resolve concerns as a group. The Employee Advisory Committee may provide a forum for addressing group concerns, but it is, as yet, too soon to say whether its latest incarnation will provide a sustained forum for real dialogue. In the meantime, individual SACs have had to negotiate with Headquarters management on a case-by-case basis for decisions, resources, and personnel. Even when this relationship succeeds, it is often perceived as one of patronage. When the relationship fails, discontent presently has no place to emerge except in the press.

**NEIC**—As described in greater detail in Chapter 3, NEIC management and staff understand their mission differently than do many in OCEFT management and most in CID. While the following description is overstated for emphasis, it illustrates the point.

In general, NEIC sees itself as a “gold standard” forensic laboratory, responsible for providing only high-level forensic analysis for both the civil and criminal enforcement programs. On the other hand, agents in the field see NEIC as chiefly responsible for handling even routine forensic analysis for criminal investigations. Understandably, these conflicting expectations about mission have produced friction in the relationship between NEIC and both OCEFT management and CID. CID personnel generally regard the quality of forensic analysis provided by NEIC as very high but they

complain that NEIC’s services are often unavailable or not available in a timely fashion. Many NEIC staff and managers, for their part, believe that even though they lack the resources to meet their mission as they define it, they always lose patronage-based competitions with CID for resources. According to NEIC and to some outside observers, when conflict inevitably arises between NEIC and CID over priorities, CID ultimately wins because of agents’ ability to successfully complain to OCEFT managers who will almost always resolve such conflicts in favor of the criminal program. NEIC managers also assert that this problem is compounded by the fact that they receive untimely and inaccurate information from OCEFT management regarding their budget, making it difficult to plan and allocate resources efficiently. Weekly conference calls between NEIC (and the other Divisions) and OCEFT management are reportedly of little value in resolving these concerns.

**Other Federal Law Enforcement Agencies**—We were unable within the scope of this review to do a full assessment of OCEFT’s relations with other Federal enforcement agencies. Anecdotal information we did receive tended to support the view that, overall, these relationships are relatively strong in the field. In some cases, CID staff borrow needed equipment from other Federal law enforcement agencies that they cannot requisition through Headquarters. The number of jointly-investigated narcotics cases indicates that, at some level, these other Federal law enforcement agencies value OCEFT’s investigative capabilities.

In the early years of EPA’s criminal enforcement program, there was some conflict between EPA and the FBI over responsibility for investigating and prosecuting environmental

crimes, with FBI having far greater resources and some interest in environmental crimes. However, since September 11, the Bureau reports that it has redirected most of its resources to counter-terrorism efforts. This does not mean that FBI agents will not assist on occasion, but it does mean that EPA, more than ever, is the primary Federal agency that will pursue environmental crimes.

In some cases, relationships with other Federal law enforcement agencies have been formalized by the creation of an Environmental Crimes Task Force (ECTF). Where the participant agencies bring resources to bear on task force activities, the task force model has succeeded in strengthening OCEFT's ties with other Federal and State law enforcement agencies and in supplementing the resources available to address environmental crimes. Nonetheless, it seemed from our interviews that different areas have had different experiences with ECTFs. The success of an ECTF often appears to be a function of the temperament and personality of those involved and the level of participation by its members; of particular importance is the level of participation by the AUSA. In addition, a large task force (ranging, for example, from 15 to 40 participants) seems to require a core of dedicated individuals to schedule meetings, develop the agenda, and attend to other ministerial matters. Variability in these components of success has meant that ECTFs have not been uniformly successful. The most successful ECTFs have become force multipliers in addressing environmental crimes, while others have served as forums for discussion, with few investigations or prosecutorial actions resulting from their work.

**State and Local Agencies**—Like its relations with other Federal law enforcement agencies, OCEFT's relations with State and local

regulatory and investigative agencies are reportedly robust. As part of OCEFT's Strategic Enforcement Initiative, field offices were required to establish relationships with State, local, and tribal partners. Field personnel generally regard these relationships as stable and mutually beneficial, again, in large measure because there usually exists a confluence of interest between Federal and State investigators when a State or local agency refers a case to EPA for investigation. State and local agencies benefit from their relationship with EPA, not only by access to CID's investigative resources, but also through access to NETI training geared specifically to State and locals. This training clearly contributes positively to the relationship.

Independent of the Strategic Enforcement Initiative, OCEFT is presently attempting to cultivate stronger relationships with various local, national, and international law enforcement organizations to promote environmental criminal enforcement. These organizations include the National Organization of Black Law Enforcement Executives, the Hispanic American Police Command Officers Association, and the International Association of Chiefs of Police. OCEFT is also working with four Regional Environmental Enforcement Associations under the aegis of various cooperative plans to stimulate local interest in criminal enforcement of the environmental laws. While some of these efforts are still in their infancy and depend for their continued existence on the availability of office resources, they do represent an effort to strengthen OCEFT's ties with State and local law enforcement entities.

### **Prosecutorial**

**Federal Prosecutors**—There are many examples of strong relationships between OCEFT and Federal prosecutors in the U.S.

Attorneys Office and the Environmental Crimes Section of DOJ. Agents and prosecutors often share a common prosecutorial objective and many communicate openly and frequently regarding case-related matters. Indeed, most agents we interviewed are more likely to see Federal prosecutors as their principal client than EPA as a whole. OCEFT communicates with Environmental Crimes Section management to discuss strategic vision, individual cases, and any problems that have arisen in the relationship. Arrangements for parallel meetings between SACs and U.S. Attorneys Offices vary in the field.

We did receive reports that the last year has seen an increase in the DOJ's overall perception of inconsistency among CID Area offices and their belief that stronger leadership could provide greater focus, direction and oversight. Further, some officials with whom we spoke suggested that the program could benefit from better sharing of information between agents and prosecutors, and that a "culture of secrecy" within OCEFT can inhibit the pursuit of potentially fruitful cases and the development of better integrated compliance and enforcement strategies.

We also observed some situations where relationships between field offices of CID and individual U.S. Attorneys Offices had deteriorated. The reasons for this varied from place to place, but personalities on both sides were often cited as one of the reasons for this. Where this occurred, it appeared more likely that U.S. Attorneys would decline environmental cases and were less likely to share in whatever strategic objectives OCEFT might be pursuing.

These problems have the potential to become acute. In one case, an EPA SAC publicized the fact that a particular U.S.

Attorneys office was declining prosecution of cases brought to them, in order to put pressure on the U.S. Attorney to pursue environmental crimes cases more aggressively. Though this should not be portrayed as a typical situation, it does highlight the kind of problem which can occur when such conflicts arise and there is no method for dealing with them.

Even where relations are generally good between CID and Federal prosecutors, some AUSAs complain that CID agents present cases of substandard quality because the cases are not adequately vetted within the Agency before being delivered for prosecution. The principal formal mechanism by which this vetting is supposed to occur is the "referral," a memorandum that summarizes the facts and legal authority upon which a proposed case would proceed.

However, as noted in Chapter 4 there is general agreement that the current referral process needs reform. If referred cases appear disorganized or incomplete, they may not compete well for prosecutorial attention with better prepared cases presented by other law enforcement agencies. Even when there is prosecutorial interest in an informally-referred case, the formal referral can, and occasionally does, countermand all or part of the referral after the prosecutor has invested considerable time and energy into the case. More commonly, the formal referral communicates nothing of interest to the prosecutor because it is based largely on boilerplate, leaving important issues at the nexus of policy and law either unidentified or unresolved.

**State and Local Prosecutors**—CID refers many of the cases that it opens to State and local prosecutors, especially in jurisdictions where there are no Federal prosecutorial resources

available for lack of interest, lack of personnel, or both. Given the confluence of interest between agent and prosecutor, where these relationships exist, they are generally stable and mutually beneficial. Still, these relationships do not exist in many States because the State either lacks the resources needed to pursue environmental criminal cases, or lacks prosecutorial interest, or both. There presently exists no formal mechanism by which OCEFT would share its strategic vision with State or local prosecutors, or stimulate prosecutorial interest and resource commitments where none currently exist.

### **Other**

**NETI**—NETI's mission is to train Federal, State, local and tribal lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental law. To do this they need good communications and working relationships with EPA Headquarters and Regional offices, and other Federal, State, local and tribal organizations. In addition, NETI provides training grants to four State associations: Midwest Environmental Enforcement Association; Northeast Environmental Enforcement Project; Southern Environmental Enforcement Network; and the Western States Project which represent 47 member States and 4 Canadian provinces.

Because NETI's audience is large, diverse and geographically scattered, courses are offered at its 3 main EPA campuses, the 10 Regional offices, and other State, local and tribal facilities across the country. For all of this to be successful, it is obvious that good lines of communication and working relationships need to be maintained with their external partners and customers. In our interviews we found this to be the case. Their offerings are well known by their

customers and demand for these courses normally exceeds supply. They are known for the quality and timeliness of their course materials, instructors, and ability to respond to specific needs of individual groups.

The only negative comment received was that NETI's budget has been severely restricted, curtailing its ability to provide more course offerings, develop new curricula and expand its use of technological innovations in training delivery. NETI staff and management believe their program has suffered significant resource issues as a result of OCEFT management decisions to centrally manage resources, both fiscal and human, and make criminal investigations a higher priority.

**Regions**—As part of OCEFT's Strategic Enforcement Initiative, CID Area offices were instructed to develop a yearly strategic plan that incorporates the needs of EPA's Regional offices, among others. In some cases, this has led to regular meetings at the SAC level with Regional managers and civil enforcement personnel. Where SACs have nurtured these relationships, they have been stable and mutually beneficial. However, some SACs reportedly are less committed to these relationships, as a function of personality, vision, or both. In other cases, CID staff believe that Regional EPA program staff have not been committed to the relationship because they do not fully embrace the criminal enforcement mission. In still other cases, agents report that the relationship is impaired by lack of good communications technology such as up-to-date computers and cell phones. In sum, CID relations with the Regions are inconsistent: strong in some places and weak in others, depending in most cases on the personalities involved.

One of the most critical Regional

relationships for OCEFT is that with the Regional Criminal Enforcement Councils. RCEC's provide critical legal support for the criminal enforcement program and are vital partners with the Special Agents in case development, analysis and review. In addition to providing this critical legal support, the RCEC's help to provide liaison and communication with other parts of EPA's Regional offices. There are about 30 RCEC's throughout the country, most co-located with CID Area offices. Although their primary work is with the Special Agents, they report to the Regional Counsel's office in each of the ten EPA Regions. RCEC's also work closely with attorneys in LCRMD.

We observed that relationships between RCEC's and Special Agents are inconsistent from office to office, and range from extremely close and cooperative to distant. We found it difficult to generalize about reasons for this inconsistency or to point to any particular underlying factor for it.

There has been discussion over the years about whether the RCEC's should continue to report to the Regional Counsels as they do now, or whether their reporting should be changed so that they report to the Director of OCEFT, possibly through LCRMD. RCEC's interviewed in the course of this review generally supported maintaining the current reporting relationship. Our own sense from this review is that while there are issues which need to be addressed, such as reforming the referral process and fostering better communication among the RCECs and between the RCECs and Headquarters, the independence and liaison with the Regional offices which RCECs can provide is essential. The potential problems of less than independent advice which could result if RCECs were subordinate to OCEFT would be worse than the management issues of miscommunication and

mistrust which now come up on occasion in these relationships.

### **Relationships Related to Ancillary Activities**

**Joint Terrorism Task Forces**—Agents we interviewed who were participating in Joint Terrorism Task Forces generally reported that they helped to strengthen OCEFT's relationships with other Federal law enforcement agencies. Still, some agents reported that the lack of adequate personnel, equipment, and training means that CID often brings relatively little of value to the collective endeavor. If other agencies share this perception, there is presently no mechanism by which they would communicate this message to OCEFT management except through CID agents.

### **Recommendations**

#### **5.1. OCEFT should more systematically monitor and manage the health of relationships within the office.**

The most seriously impaired of OCEFT's relationships exist *within* OCEFT. The lack of any systematic effort to identify and resolve conflicts has meant that many important relationships have remained in ill-repair for years, leaving personnel with no place to articulate their concerns and grievances except in the press and the courts.

To make OCEFT's internal relationships stronger and more uniform, Headquarters management should more actively and systematically manage these relationships, not merely the substantive issues around which the relationships are centered. This type of management involves actively seeking out failed or struggling relationships and employing a common, open process for resolving these



conflicts. There are several models for such conflict resolution, and those models should be explored before a particular approach is selected. The essential point, for purposes of this analysis, is simply that relationships within OCEFT are important, and it is a management responsibility to monitor and actively managed them.

### **5.2. OCEFT should more systematically monitor and manage the health of relationships between the office and other law enforcement agencies.**

While OCEFT's external relations are, on the whole, better than internal relations, even within its external relationships there exists considerable variability. Where there is a general confluence of interest, as in the case of Federal and State prosecutors, the relationship is generally robust. Where SACs have developed and managed relationships with Regional staff and State and local investigators under the Strategic Enforcement Initiative, these linkages have also remained strong and fruitful. Still, where a relationship has failed, in most instances there presently exists no mechanism by which to identify this failure and revive the relationship.

As in the case of OCEFT's internal relationships, management should seek regular feedback on the health of its relationships with external entities. This outreach might consist of regular phone calls or meetings with management at these entities to discuss what is going well in the relationship and what could be improved. Regular meetings of this nature, like that currently held with the Environmental Crimes Section, might serve as the occasion for the respective management teams to solicit feedback from their own staff.

### **5.3. Special Agents in Charge should conduct more proactive and consistent outreach with**

### **EPA Regional offices.**

In the course of traveling to Area offices, the review team noted that some offices appear to have much better relationships with their Regional office counterparts than others. In those offices where things appear to be "working", there seemed to be strong leadership on the part of the Senior Agent in Charge and a professional relationship between agents, regional Enforcement Counsel, and their Regional counterparts in civil enforcement and in laboratory services. OCEFT management should examine best practices among offices with good relationships and find ways to spread these to other offices to promote greater consistency in these relationships, and communicate actively to SAC's that this is an affirmative part of their responsibilities.

### **5.4. OCEFT should actively develop, communicate and promote a strategic vision among Federal and State prosecutors.**

OCEFT needs to communicate a strategic vision to prosecutors as a way of making the most of a scarce prosecutorial resource. Part of this effort should include some mechanism to maximize the appeal of EPA cases to prosecutors. A better-defined strategic vision and more systematic case screening by SACs could contribute to a redefined referral process that provides real analytical depth in a timely fashion.

As noted in Chapter 4, this may mean that SACs will need to screen cases according to strategic guidance provided by Headquarters so that fewer referrals need be written, allowing the RCECs and LCRMD to produce a product of higher quality in shorter time. This type of revision to the referral process would not allow OCEFT to rely as heavily on the number of

referrals as a measure of success as it does at present, but it would alleviate problems which

result now from trying to use the referral as both an activity measure and an analytical tool.

## CHAPTER 6: Measuring Program Effectiveness

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*How well does OCEFT measure the results of its activities and are there management process changes which could more effectively measure the effectiveness of the criminal enforcement program in particular?*

The challenge of measuring the effectiveness of criminal enforcement is common to all law enforcement agencies. EPA would like to associate quantitative, measurable environmental results with all of its activities, and the Agency has been recognized as a leader in the Federal Government in integrating its planning and budgeting activities with information about Agency performance. In recent years, the Fiscal Year 2002 Annual Report and the annual Enforcement and Compliance Assurance Accomplishments Report have presented substantial information about environmental outcomes resulting from Agency enforcement actions.

Criminal enforcement poses special challenges, however. While civil enforcement can hold individuals personally liable and subject them to financial penalties, only criminal enforcement can impose probation or jail sentences. The purpose of these sanctions is not just to punish lawbreakers, but also to deter future violations. Anecdotal evidence certainly supports this view—corporate executives and counsel who represent them report that they take the possibility of being held criminally liable very seriously. Yet as Professor Malcolm Sparrow has noted, “the deterrent function is notoriously difficult to isolate and measure,”<sup>3</sup> leaving criminal enforcement organizations searching for ways to attribute specific (in this case) environmental outcomes to particular

actions.

OCEFT has responded to this dilemma by keeping a wide range of traditional statistics. These include records aggregated annually on the number of cases initiated, the number of cases referred for prosecutorial assistance to U.S. Attorneys Offices or to DOJ, the number of defendants charged, the length of sentences handed out in cases prosecuted, and the amount of criminal fines imposed. Information about these statistics is maintained in an information system known as the Criminal Docket, or Crim Doc.

OCEFT in recent years has begun to compile information on the environmental outcomes of criminal investigations and prosecutions, requiring agents to calculate and record such information on Case Conclusion Reports filed at the time a case is closed. This initiative was reinforced as recently as September 29 of this year in communications to all SACs, and “aggregate amounts of pollution reduced or curtailed as a result of criminal prosecutions” is one of the performance measures listed in the OCEFT Five Year Strategic Plan along with the more traditional measures of referrals and levels of sentences, fines and restitution.

Nevertheless, there are significant differences of opinion within OCEFT about the measurement of results. Staff are divided over the merits of specific traditional performance measures. Some of these Divisions reflect different professional cultures (*e.g.*, attorneys and investigators). Others reflect different

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<sup>3</sup>Sparrow, Malcolm. The Regulatory Craft. Brookings Institution Press, Washington, DC, 2001. p. 283

philosophies about investigations themselves—such as how complete an investigation has to be before a request for prosecutorial assistance is appropriate, or what level of resource commitment warrants initiating a case. Still others reflect different strategic approaches to criminal enforcement—choices between investing in complex cases with potentially large impacts but equally high potential prosecutorial risks, versus cases whose systemic impact may not be as great but are more likely to appeal to prosecutors or juries. September 11 added a new dimension to this calculation—the assistance OCEFT has provided to counter-terrorism investigations. Finally, while it is impossible to document specifically within the scope of this review, there is a palpable sense within OCEFT, and especially CID, that the desire to produce favorable traditional enforcement statistics—the so-called “bean count”—creates pressures for actions which may not represent the most effective strategic use of limited investigative and prosecutorial resources. As one agent reported, “It’s always quality over quantity until the end of the year comes.”

There are potentially grave dangers associated with an over-emphasis on quantitative statistics. The obvious one is that EPA could pursue criminal investigations in cases which do not merit this kind of attention. Apart from the resulting waste of resources, even if such an investigation is ultimately found to be without merit, the impact on the target of an investigation can be traumatic. Criminal enforcement may be only one of EPA’s enforcement tools, but it is a distinctive one. To even consider using it is a significant act, not to be undertaken lightly.

An evaluation of the merits of cases initiated by OCEFT in recent years is beyond the scope of this review. However, anecdotal evidence to

suggest that while many cases can be cited where the interests of both justice and environmental protection were well served, there is still room for improvement, and continued management vigilance in this area is essential.

There are complex issues associated with case selection. One is that the criteria for selecting which cases to pursue can turn less on whether they are most likely to produce the greatest environmental or deterrence benefits than on whether they will be attractive to prosecutors or will produce activity statistics which reflect favorably on the organization. A second is that investigators may have different standards on when sufficient evidence exists to warrant seeking prosecutorial assistance. A third involves the balancing of legal risks, especially in new or complex cases, against the desire that prosecutions occur swiftly to achieve maximum deterrent effect. Finally, while everyone agrees that national consistency in legal determinations is desirable, in practice this principle is balanced against the need for timely actions and flexibility in decentralized offices.

The most important, and the most difficult, measurement need is for OCEFT leadership to define and implement a consistent, unifying vision of effective environmental criminal enforcement. Measurements should flow from this vision. Without it, the program will continue to be judged solely on numbers of investigative and prosecutorial activities without asking the more important question of what these numbers signify for environmental protection. OCEFT needs this vision to educate the Agency, the Congress and the public about the values of criminal enforcement which go beyond activity levels—values such as satisfying the public’s sense that justice is being served for the worst polluters, or the importance of the criminal program in enhancing the effectiveness of all of

EPA's compliance and enforcement tools. These are difficult values to measure, but they matter as much as traditional short-term activity indicators.

Articulating such a vision will be exceptionally difficult. It will require a shift in thinking about environmental criminal enforcement which runs counter to the traditions of law enforcement organizations. Many within OCEFT, for understandable reasons common to most law enforcement agencies, think of criminal enforcement as a value in itself. As such, they argue that "success" in the traditional measures—investigations, referrals, indictments, convictions, sentences, probations—justifies the Agency's investment in such activities, and indeed with more investment, they could get more "results."

Few would argue with the need for effective criminal environmental law enforcement. The key word, of course, is "effective," and about this much dispute remains. Additional resources are needed—but they will always be limited. The immediate challenge for OCEFT is how to target available resources so that environmental crimes cases are productive from a prosecutorial standpoint, promote justice, and reduce pollution. This will involve more integration with civil enforcement and even regulatory development than OCEFT has historically done, to produce better outcomes than each individual program can do alone. At the same time, the distinctive features of criminal enforcement which make it effective, and keep it somewhat insulated, must also be preserved. If successful, this new vision of success for environmental criminal enforcement, one that goes beyond the number of traditional investigations or prosecutions, should ultimately drive what the program chooses to measure.

### **Current Measures**

Several quantitative measures are used in OCEFT to assess progress and productivity in the criminal program. A brief discussion of each follows.

**Cases Initiated**—This measure refers to the decision to open an investigative file. Normally this occurs in response to a tip or complaint from a private party outside the Agency, or in response to a matter referred by civil personnel at EPA, a State environmental agency, or other governmental official.

A key question for management is how much time should an agent be allowed to spend before making a formal decision to open a case. CID policy provides that when more than 8 hours of agent time is spent following up on a tip, lead or complaint, a case file should be opened, which counts as a case initiation. This requires no decision about whether the case will ultimately merit prosecution, but does require a judgment about whether further investigative resources should be invested in pursuing the case. A decision not to open a case is a decision that, absent additional information, the matter should not be pursued criminally. Of course, decisions to open a case can be made with less than 8 hours of time invested if the facts warrant it. This decision is the responsibility of the SAC, although it can be delegated to an Assistant SAC or Resident Agent in Charge.

The purpose of the 8-hour rule is to avoid large time investments in criminal investigations without management review of their potential value. Agents in the field observed that the "8-hour rule" serves as a guidance in determining when to open a case, but is not observed strictly, especially in cases requiring substantial travel time to check out a lead or tip.

The problem with using cases initiated as a

measure of productivity is the potential for inconsistency in judgments about when to open a case. Some of those interviewed believe that certain offices applied lower thresholds in order to bolster their workload statistics and argue their need for more resources. This can also potentially result in a backlog of cases that remain open for long periods of time.

A different approach to this measure might be to examine what percentage of cases opened result in prosecution. Additional analysis of the types of cases opened, and those that remain open for a long time, could yield additional insights about what types of criminal cases are most likely to be productively pursued given available agent resources.

**Cases Referred**—As noted in Chapter 4, there are really two referral processes: (1) the formal process and (2) an informal process which relies on contacts between agents and the U.S. Attorneys Office or other prosecutors. EPA reports on cases formally referred to DOJ.

There are three difficulties with referrals as a measure of success. First, referrals can become ends in themselves. Several agents reported that there was an expectation that agents would produce at least two referrals a year. Any such emphasis can degenerate into a quota and put pressure on agents and offices to pursue and refer inappropriate cases. Second, even when offices are thoughtful about referrals, they may use different criteria in practice in deciding when a case is ready to refer, with some packages being more complete than others. Third, by the time a formal referral is prepared, usually the decision about whether the case will be accepted for prosecution has already effectively been made. As noted in Chapter 4, the referral may be an outdated mechanism in an era of closer collaboration between investigators and

prosecutors.

An additional critique of referrals as a measure is that cases referred may not be accepted for prosecution. A 1997 report from the Bureau of Justice Statistics stated that 61 percent of EPA criminal referrals for pollution offenses were declined for prosecution. We reviewed statistics from Crim Doc which suggest that in recent years, this trend has improved. In the last 5 years, out of 1,662 cases referred, 240, or 14.4 percent, are recorded as having been declined for prosecution.

However, this overall total masks inconsistencies among offices. The percentages of referred cases which were declined for prosecution in the last 5 years ranged from a high of 35 percent to a low of 4 percent among CID offices in the 10 EPA Regions. Moreover, these statistics do not by themselves provide insight into why the referrals were rejected. Reasons given in interviews ranged from lack of prosecutorial interest to incomplete investigations to legal risks.

**Indictments**—EPA tracks defendants charged as a measure of performance. Some agents believe that an indictment, more than a referral, shows that they have met the test of developing a prosecutable case, and convinced their principal client—the prosecutor—of its merits. They view indictments as a better measure than convictions due to the unpredictable nature of the court system.

**Sentences**—EPA also tracks sentences imposed either through jury verdicts or plea agreements. Many agents view this as a true measure of success that more than any other is unique to criminal enforcement. However, one obvious danger of using sentences as a measure of success in the environmental criminal field is

that the length of jail terms can become an end in itself rather than a means to the end of changing behavior to prevent pollution.

There have been arguments about how to credit sentences which result from mixed cases. Examples include “laboratories” involved in producing illegal drugs, or companies who falsify certification records and use untrained illegal immigrants in asbestos removals. Defendants in these cases may be indicted on violations of multiple criminal statutes, only some of which are strictly environmental violations. In some cases, environmental violations are the easily provable charge in a larger underlying pattern of criminal behavior. OCEFT has developed guidance on how to apportion sentences in such cases but the subject remains controversial.

**Fines**—OCEFT also tracks criminal fines. Over the last 5 years, EPA reports that it has collected \$433.4 million in criminal fines, which compares with \$559 million in civil and administrative fines over the same period. (This does not include Supplemental Environmental Projects, valued in 2001 and 2002 at \$147 million). By comparison, injunctive relief over the same 5 years, all from civil and administrative cases, totaled \$15.4 billion. The same issue of apportionment exists for criminal fines as for sentences.

It appeared from our interviews that environmental criminal investigators generally placed more emphasis on sentences and probation than on financial sanctions as a measure of success. As one agent reported, “I’m a salesman. I sell jail time to people.” A SAC, noting the difference between fines and sentences, observed that “I’m not about pursuing corporations, I’m about pursuing individuals.”

**Environmental Outcomes**—In recent years OCEFT has been attempting to track environmental outcome measures associated with its activities. This effort has received a mixed reception in the field. One SAC stated his belief that the criminal program should be making this effort, and had assigned responsibility to one of his agents to do calculations of such benefits for inclusion on Case Conclusion Data Sheets. Another, more typical reaction was skepticism, noting that such calculations were desirable in principle but difficult in practice. Agents also questioned whether calculations of such outcomes on individual cases addressed the real purpose of the criminal enforcement program. For example, one SAC stressed that even though you would “never be able to quantify” it, stories of people who went to jail for environmental crimes would “send a loud message” and have a deterrent effect beyond the immediate number of pounds of pollution prevented.

### **Values of Criminal Enforcement**

Several individuals in the course of the review noted their belief that the value of environmental criminal law enforcement went beyond the amount of pollution reduced by particular actions. In addition to the deterrence value discussed earlier, interviewees cited the importance to the public of the perception that everybody involved in the criminal justice system “did their job.” One AUSA made the point that all of the different components of justice needed to be met—well supported cases prosecuted vigorously, with due process observed—and that if these tests were met, a case was “successful” whether the defendant was found guilty or not.

Most investigators and EPA criminal enforcement counsels do not share this view, however, and would not regard cases where

prosecution was declined, no plea agreement was reached, or no conviction was obtained as successful outcomes. In part, this is a realistic recognition of limited resources: every case represents a valuable investment. On the other hand, there are other values which the criminal enforcement program can address which traditional measures of success may not address.

Professor Malcolm Sparrow has pointed out that traditional criminal enforcement has been largely reactive, responding to tips and complaints. Our review suggests that this characterization is largely, though not exclusively, true of EPA's criminal enforcement program. The problem with a reactive program is that it is just that—reactive. In the worst case, such a program only responds to what comes in the door, with no pursuit of the root causes of criminal behavior, little distinction between important and trivial cases, and a preoccupation with traditional statistics rather than real accomplishments, in this case in preventing pollution.

Professor Sparrow suggests that a different way of looking at the accomplishments of a successful criminal enforcement program could focus on the following additional values.

**Insight into vulnerabilities**—Criminal investigations can find weaknesses in the regulatory scheme which EPA does not know. The insights from these investigations could be used to provide feedback to the Agency to enable appropriate systemic modifications and change the incentives associated with particular behavior. These system changes could have more profound effects on overall environmental results than the disposition of any single case.

**Strategic selection of enforcement targets**—While environmental criminal

enforcement will inevitably be reactive to some degree, the most important management decision for a criminal investigation function is the choice of what targets to work on. OCEFT's criteria for opening a case reflect the importance of this decision, but the application of these criteria is now largely reactive to what arrives in the form of tips and complaints.

The strategic selection of targets involves two considerations. The first is the potential direct environmental benefits associated with particular targets. The second is the selection of targets of opportunity that would have maximum public impact in affecting behaviors. Sometimes such cases will also have high direct environmental benefits, but publicity benefits alone can have value in prevention and deterrence. As long as case selection is part of a sound strategy for affecting behavior, these two components can reinforce each other well.

CID has been engaged in two efforts to increase its strategic focus. As noted in Chapter 4, SACs have been tasked with developing, in conjunction with EPA Regional offices, strategic plans for their activities. This is a promising development, but there is more work to be done, both by CID and by the rest of EPA.

CID also established a Center for Law Enforcement Information and Analysis. This was originally intended to be jointly funded with DOJ, and its objective was provide analytical services to help with precisely this function. However, congressional opposition in the late 1990's led to a withdrawal of support for the Center from DOJ. CID did consolidate some law enforcement analytical resources which had previously been located in Denver and Washington, DC, on the principle that the Center would benefit from co-location with analytical resources of other agencies in the Washington,



DC, area. At this time the director of the Center has resigned, and this function does not appear to have been effectively integrated into mainstream OCEFT planning and implementation. In addition, the location of the Center in Herndon, VA, impedes its ability to interact with the rest of OECA; indeed, few in OECA know that the Center exists.

### **Scanning and Risk Assessment**

**Functions**—Professor Sparrow notes that the tools of criminal investigation can be used outside the context of a specific case. In this instance, the objectives of investigations would be, for example, to uncover risks not now known, to determine the scope and nature of emerging problems, to identify places in a non-compliance trend where the system is vulnerable to effective intervention, or to suggest remedies to trends of non-compliance outside the context of a particular case.

None of OCEFT's current measures of success place any value on these kinds of activities, since all current measures are case driven.

**Prevention**—A final value which criminal investigations can promote is the prevention of future problems before a crime has been committed. Examples could include background checks or the discovery of undisclosed ownership arrangements in environmental matters.

Some of the homeland security functions which OCEFT has undertaken since September 11, 2001, could fit into this category, especially work with DOJ's Anti-Terrorism Task Forces and the FBI's Joint Terrorism Task Forces. Given the comparatively small number of OCEFT investigative resources, its involvement in these activities has been

necessarily limited, and as discussed earlier in this report, even this investment has been criticized as being out of step with OCEFT's core mission. What is worth noting, as some agents who have participated in these activities did, is that these roles can potentially augment and support the core mission, understood as preventing violations and promoting compliance with environmental laws. They can also build networks of support and understanding of the relative capabilities of other law enforcement partners which, properly implemented, can augment OCEFT's own capabilities. This value is consistent with EPA's overall Strategic Plan, which recognizes the cost-effectiveness of pollution prevention activities. The issue, again, is one of degree: how much of EPA's limited criminal investigative capacity can OCEFT afford to invest in these activities?

### **Recommendations**

#### **6.1. OCEFT should revise its vision and mission statements.**

OCEFT's current vision statement is:

*The Office of Criminal Enforcement, Forensics and Training is a world class organization dedicated to leadership and excellence in environmental law enforcement, forensic technology and training.*

An effective vision statement is forward looking, projecting what the organization aspires to become in the future. OCEFT's current statement presents what it "is," but contains no sense of why the organization should do these things it describes, or what benefits will result from them. Presumably, OCEFT's unique skills are indispensable to EPA's mission of protecting human health and the environment, but the current vision statement does not draw this link.

A more useful vision for the criminal enforcement functions of OCEFT would incorporate the desire to make environmental enforcement more effective by preventing, detecting, suppressing and deterring criminal violations of environmental law which can lead to significant harm to human health and environment. For NEIC and NETI, which have broader roles, a vision statement which makes the same linkage between their particular roles and the larger purposes of the Agency would be appropriate.

The mission statement says that “OCEFT’s mission is to deter violations and promote compliance with environmental laws.” The statement then lists six distinct missions, ranging from criminal investigations to forensic, scientific, technical and legal support for criminal and civil enforcement, to training, to partnerships with other governments, to technical and compliance assistance, to support for homeland security. The statement is both too broad and too narrow. The summary statement is hard to distinguish from OECA’s mission (“to improve the environment and protect human health by ensuring compliance with environmental requirements, preventing pollution and promoting environmental stewardship”). The individual mission listings describe parts of the organization but do not suggest a common link among them. A more effective mission statement would succinctly state how the activities distinctive to OCEFT contribute to the overall mission of OECA and EPA. This would provide a basis for thinking about how to measure whether OECA was effectively performing that mission. The excessive breadth of OCEFT’s current mission statement supports the observation in Chapter 3 that OCEFT, as currently structured, encompasses too many different activities to be a well focused organization.

## **6.2. OCEFT/CID should develop relational measures of performance.**

The current OECA/OCEFT Measures of Success Report lists four measures: (a) Investigations Opened, (b) Referrals, (c) Fines Assessed, and (d) Years of Incarceration Imposed. While these are interesting and useful statistics, as noted above, none are without difficulty. Understandably, Area offices tend to describe themselves in terms of which of these measures presents them in the best light.

Of course, no single measure will ever tell the entire story. Moreover, useful information for evaluation can come from analyses of how the measures relate to each other. For example, it would be useful to understand what percentage of investigations opened led to productive enforcement cases, or what percentage of referrals result in prosecutions. These relational measures can be more informative than those based solely on activity counts, and would provide a useful qualitative check on tendencies to inflate statistics by opening weak investigations or referring poor cases. Furthermore, they offer additional opportunities for benchmarking performance. For example, every opened investigation will never result in a productive enforcement case, but lessons could be learned from offices which were consistently successful in making this critical judgment in deploying limited investigative resources. Finally, this would reduce the tendency for any individual measure to become an end in itself.

## **6.3. OCEFT should develop measures which distinguish between straightforward and complex cases.**

The absence of a measure which distinguishes between straightforward and

complex cases frustrates both efforts to tell the whole criminal enforcement story, and systems to ensure that EPA's limited criminal enforcement capacity is deployed properly. Not all cases are equal. Without measures which distinguish these cases, reward systems will inevitably focus on raw numbers and discount the value of cases which, though complex, may ultimately result in greater systemic change.

One way to distinguish between cases would be to estimate and report the degree of environmental harm caused by the behavior in the case. While the prospective effect of cases through deterrence may be difficult to predict, it should be possible to say something about the degree of environmental harm caused by the case in question. This should also be a key management tool, to assist the program in focusing its resources on cases with real environmental significance. It would help managers ask critical questions about what cases are being worked, not just how many.

#### **6.4. OCEFT should continue to invest in strategic analysis of criminal enforcement data.**

The decision to create a Center for Strategic Analysis was a sound one. OCEFT should review its staffing and location to ensure that it is able to function effectively and make use of analytic resources in EPA, other Federal

agencies, and State and local governments. While 1811 series agents may be useful in this function, what is more important is that the Center be staffed with individuals who are willing to dig, ask tough questions, and build relationships with other analytic resources.

#### **6.5. OCEFT should develop measures which recognize participation by criminal investigators in integrated compliance strategies.**

What is measured is what is managed. Without measures of participation by criminal enforcement in integrated environmental protection strategies, there will be little incentive for agents and their managers to support such efforts. As a result, EPA will lose the potential benefits of such participation in making the Agency's other compliance and enforcement tools more effective, or the insights such investigations can provide on vulnerabilities within current regulatory structures.

In addition, participation in integrated strategies is a means by which the criminal enforcement program can contribute to reductions in pollution which go beyond the results of individual cases. This is just as important an "environmental outcome" as the results calculated on case conclusion sheets.

## **AFTERWORD**

In 1990, the Environmental Law Institute, in response to a request from then-Assistant Administrator Jim Strock, conducted a management review of EPA's criminal enforcement program. The review concluded that the program was "at a crossroads, requiring EPA's senior leadership to carefully choose how it wants the program to grow to maturity." The choice was between two models of program behavior. The first, described as the "Lone Ranger Model," envisioned criminal enforcers with little working relationship with the rest of EPA, "choosing their cases based on their own perceptions of EPA's priorities and sharing little in the way of credit or resources with other parts of EPA." The second model was the "Teamwork Model." Under this model, criminal program managers would retain the authority and responsibility to make case-specific decisions, but criminal enforcement would be an integral part of EPA's overall priorities, one in which the criminal enforcement program shared in the credit for the broader successes of the compliance and enforcement program.

This 1990 report contributed to the creation of a consolidated Office of Criminal Enforcement in 1991. The program has matured

greatly in the intervening years. Still, the echoes of the choice posed by the Environmental Law Institute report can still be heard in this present review and remain relevant today.

OCEFT faces many challenges in the years ahead. The good news is that there is a solid core of hard working, dedicated employees who are committed to their work and to using their skills on behalf of environmental protection. To be most effective, however, they will need strong leadership, committed to using the distinctive skills and tools which OCEFT has as an integral part of the larger mission of EPA. This will require both internal management reform and a concerted effort to reconnect OCEFT with many other partners.

OCEFT can affect its perception of itself, and its perception by others, through its choice of a vision, its statement of its mission, by the measures it uses to tell itself and others how well it is doing to achieve both, and by the way in which its leaders and members communicate with the world outside of OCEFT. We hope that the changes recommended in this report will enable the program to tell a story that is both productive in the traditional sense, and productive as an essential part of the larger mission of EPA.



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

July 10, 2003

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

Subject: Management Evaluation of the  
Office of Criminal Enforcement, Forensics, and Training

From: John Peter Suarez /s/  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

To: All OCEFT Staff  
Deputy Regional Administrators  
Regional Counsel  
Enforcement Division Directors

As you may know, effective July 6, 2003, Leo A. D'Amico, Director of the Office of Criminal Enforcement, Forensics and Training (OCEFT), was reassigned to the position of Director, National Enforcement Training Institute. In October 2002, Leo requested a reassignment of duties for family reasons. Since making that request, he has continued managing a strong criminal enforcement program. I thank Leo for his dedication, hard work and results over the past decade. I am confident that Leo will bring the same amount of enthusiasm, dedication, and hard work to the demands of the National Enforcement Training Institute. I have asked Emmett Dashiell to act as the OCEFT Director until a permanent selection is made.

This transition gives us a logical opportunity to review the current operations of OCEFT and see if there are opportunities to meet the challenges that we face even more effectively. For this purpose, it is my sense that it would be most useful to have someone conduct this review who is within EPA and familiar with the work of the enforcement program, but independent of the OECA reporting chain, and not a candidate for the OCEFT Office Director position. For this reason, I have asked Stan Meiburg, Deputy Regional Administrator from Region 4, to undertake a timely review of the management processes in place in OCEFT. I am particularly interested in an assessment of the following:

**Appendix 1**

1. What is the overall condition of the organizational and management culture within OCEFT?
2. Is the current structure and deployment of OCEFT resources optimal for effective utilization?
3. Are there management process changes which could contribute further to the strategic direction of OCEFT and the effective oversight of OCET resources?
4. How well defined are OCEFT's links to the mission and organizations within EPA and relevant Federal, state, and local criminal justice organizations?
5. How well does OCEFT measure the results of its activities and are there management process changes which could more effectively measure the effectiveness of the criminal enforcement program in particular?

Again, this is not an audit or evaluation, but rather a management review. During the course of this review, Stan will examine available and relevant material and conduct interviews at Headquarters and in field offices as needed. I have also asked Stan to establish a mechanism by which people who would like to raise issues for his consideration may do so in confidence.

I have asked Stan to complete his review and report to me by November 1, 2003. I believe his findings will be very useful to the next OCEFT Director and to me as we move forward with our "Smart Enforcement" agenda. I ask you to ensure that your staff provides him with any assistance that he may need as he undertakes this task. Thank you for your continued support and assistance, and your dedication to EPA's mission.

cc: Assistant Administrators  
General Counsel  
Regional Administrators  
Linda Fisher  
Tom Gibson  
Nikki Tinsley

**OFFICE OF CRIMINAL ENFORCEMENT, FORENSICS, AND TRAINING**

(dollar amounts in thousands)

Approp / Program	FY 2000 Enacted Budget				FY 2001 Enacted Budget				FY 2002 Enacted Budget				FY 2003 Enacted Budget			
	FTE	TOTAL Dollars	Extramural Dollars	Other Dollars	FTE	TOTAL Dollars	Extramural Dollars	Other Dollars	FTE	TOTAL Dollars	Extramural Dollars	Other Dollars	FTE	TOTAL Dollars	Extramural Dollars	Other Dollars
<b>TOTAL:</b>	<b>386.1</b>	<b>52,015.1</b>	<b>8,931.9</b>	<b>43,083.2</b>	<b>385.8</b>	<b>54,628.0</b>	<b>7,645.7</b>	<b>46,982.3</b>	<b>376.3</b>	<b>54,387.2</b>	<b>6,488.1</b>	<b>47,899.1</b>	<b>399.8</b>	<b>58,817.0</b>	<b>5,509.8</b>	<b>53,307.2</b>
Criminal Enforcement	249.2	30,842.8	1,729.9	29,112.9	248.5	32,693.1	1,860.2	30,832.9	242.6	33,043.3	1,468.0	31,575.3	238.5	34,291.0	1,124.4	33,166.6
Homeland Security	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	28.0	3,651.9	0.0	3,651.9
Enforcement Training	22.3	5,133.3	3,051.8	2,081.5	25.0	5,083.5	2,278.3	2,805.2	18.3	3,753.1	1,475.4	2,277.7	17.0	3,585.6	1,325.7	2,259.9
Forensics Support	114.6	16,039.0	4,150.2	11,888.8	112.3	16,851.4	3,507.2	13,344.2	115.4	17,590.8	3,544.7	14,046.1	116.3	17,288.5	3,059.7	14,228.8
<b>EPM:</b>	<b>214.5</b>	<b>28,799.3</b>	<b>4,025.4</b>	<b>24,773.9</b>	<b>215.4</b>	<b>29,499.7</b>	<b>3,267.7</b>	<b>26,232.0</b>	<b>208.1</b>	<b>29,461.1</b>	<b>2,455.4</b>	<b>27,005.7</b>	<b>224.7</b>	<b>32,822.9</b>	<b>1,989.4</b>	<b>30,833.5</b>
Criminal Enforcement	194.8	24,049.3	973.6	23,075.7	196.5	25,414.5	1,343.7	24,070.8	194.1	26,382.3	1,143.7	25,238.6	190.0	27,043.6	822.6	26,221.0
Homeland Security	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	22.0	2,881.2	0.0	2,881.2
Enforcement Training	19.7	4,750.0	3,051.8	1,698.2	18.9	4,085.2	1,924.0	2,161.2	14.0	3,078.8	1,311.7	1,767.1	12.7	2,898.1	1,166.8	1,731.3
<b>S&amp;T:</b>	<b>77.4</b>	<b>9,535.6</b>	<b>1,821.6</b>	<b>7,714.0</b>	<b>76.9</b>	<b>10,689.9</b>	<b>2,392.8</b>	<b>8,297.1</b>	<b>76.8</b>	<b>10,779.0</b>	<b>2,362.5</b>	<b>8,416.5</b>	<b>77.7</b>	<b>11,088.4</b>	<b>2,233.9</b>	<b>8,854.5</b>
Forensics Support	77.4	9,535.6	1,821.6	7,714.0	76.9	10,689.9	2,392.8	8,297.1	76.8	10,779.0	2,362.5	8,416.5	77.7	11,088.4	2,233.9	8,854.5
<b>Superfund</b>	<b>94.2</b>	<b>13,680.2</b>	<b>3,084.9</b>	<b>10,595.3</b>	<b>93.5</b>	<b>14,438.4</b>	<b>1,985.2</b>	<b>12,453.2</b>	<b>91.4</b>	<b>14,147.1</b>	<b>1,670.2</b>	<b>12,476.9</b>	<b>97.4</b>	<b>14,905.7</b>	<b>1,286.5</b>	<b>13,619.2</b>
Criminal Enforcement	54.4	6,793.5	756.3	6,037.2	52.0	7,278.6	516.5	6,762.1	48.5	6,661.0	324.3	6,336.7	48.5	7,247.4	301.8	6,945.6
Homeland Security	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	6.0	770.7	0.0	770.7
Enforcement Training	2.6	383.3	0.0	383.3	6.1	998.3	354.3	644.0	4.3	674.3	163.7	510.6	4.3	687.5	158.9	528.6
Forensics Support	37.2	6,503.4	2,328.6	4,174.8	35.4	6,161.5	1,114.4	5,047.1	38.6	6,811.8	1,182.2	5,629.6	38.6	6,200.1	825.8	5,374.3

<b>List of Area and Resident Offices</b>			
<b>Atlanta Area Office</b> Nashville Louisville Charlotte Knoxville Columbia	<b>Boston Area Office</b> New Haven Manchester	<b>Chicago Area Office</b> Minneapolis Indianapolis	<b>Cleveland Area Office</b> Detroit
<b>Dallas Area Office</b> Albuquerque El Paso	<b>Denver Area Office</b> Helena Salt Lake City	<b>Houston Area Office</b>	<b>Jacksonville Area Office</b> Tampa Miami Jackson
<b>Los Angeles Area Office</b> Phoenix San Diego	<b>New Orleans Area Office</b> Baton Rouge	<b>New York Area Office</b> Buffalo Syracuse Trenton	<b>Philadelphia Area Office</b> Wheeling
<b>Portland Area Office</b> Seattle Anchorage Boise	<b>San Francisco Area Office</b> Sacramento Honolulu	<b>St. Louis Area Office</b> Kansas City Des Moines	<b>Washington Area Office</b> Baltimore