

April 1992

ENVIRONMENTAL ENFORCEMENT

Alternative Enforcement Organizations for EPA



**RESTRICTED--Not to be released outside the
General Accounting Office unless specifically
approved by the Office of Congressional
Relations.**

RELEASED



**United States
General Accounting Office
Washington, D.C. 20548**

**Resources, Community, and
Economic Development Division**

B-247208

April 14, 1992

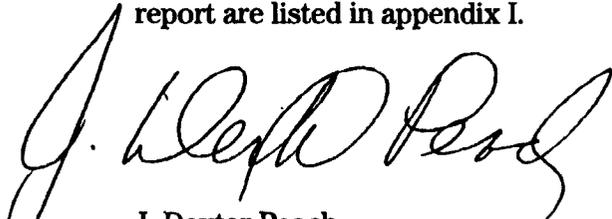
The Honorable John Conyers, Jr.
Chairman, Committee on Government Operations
House of Representatives

The Honorable Mike Synar
Chairman, Environment, Energy, and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives

In response to your August 2, 1991, request, this report discusses the advantages and disadvantages of the current and alternative organizational structures for enforcement responsibilities at the Environmental Protection Agency (EPA).

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this report to the Administrator, EPA; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

This report was prepared under the direction of Richard L. Hembra, Director, Environmental Protection Issues, who may be contacted at (202) 275-6111. Other major contributors to this report are listed in appendix I.



J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Although the Environmental Protection Agency (EPA) has given top priority to enforcing environmental laws and regulations, management and organizational problems have hindered its enforcement efforts. In particular, as a recent GAO review of EPA's penalty practices found,¹ a diffuse enforcement organization has contributed to a lack of clear accountability for adhering to agency policies.

Because the Congress is currently considering proposals to confer Cabinet status on EPA, the effectiveness of the agency's organization for enforcement has come under scrutiny. Consequently, the Chairmen of the House Committee on Government Operations and its Environment, Energy, and Natural Resources Subcommittee asked GAO to examine the advantages and disadvantages of the current and alternative organizational structures for enforcement responsibilities at EPA.

Background

Before EPA's current organization for enforcement was established in the early 1980s, enforcement for all regulatory programs was consolidated at headquarters within the Office of Enforcement. In each of the 10 regions, a single division was responsible for enforcing all regulatory programs. With reorganization, responsibility for enforcement at headquarters was extended from the Office of Enforcement to the four environmental program offices, and in each of the regions enforcement staff were assigned to the program divisions and to the Office of the Regional Counsel. Since these changes, each of EPA's administrators has considered returning to a consolidated structure but decided against doing so because of concerns about the timing of such a move and the disruption it would cause. Although neither EPA nor any proposed legislation currently advocates changing EPA's enforcement structure, House and Senate bills to create a Cabinet department of the environment have provisions for commissions to study and recommend changes in EPA's organization and management.

Results in Brief

Both the current organization and a consolidated enforcement organization offer advantages and disadvantages with respect to enforcement. While neither structure is perfect, neither is so flawed as to be unworkable, as long as steps are taken to compensate for its shortcomings.

¹Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained by Violators (GAO/RCED-91-166, June 17, 1991).

The current organization, which incorporates enforcement into the headquarters and regional program offices, distributes enforcement responsibility throughout the agency and, according to some agency officials, thereby facilitates the writing of enforceable regulations and permits. In addition, program managers claim that the current organization helps them to balance enforcement with other program objectives. It does not, however, necessarily provide a focus for enforcement, pinpoint accountability for enforcement, or promote consistency in the implementation of enforcement policies.

A consolidated organization would provide focus for enforcement, promote accountability and consistency for enforcement throughout the agency, and facilitate implementation of cross-program, or multimedia, enforcement actions, in the view of EPA officials and others. Officials pointed out, however, that shifting enforcement staff and resources out of program offices might diminish these offices' capacity to achieve their overall program goals. In addition, consolidation would entail reassigning nearly 400 staff at headquarters and over 3,000 in the regions, disrupting existing operations.

Better internal monitoring and clearer assignment of responsibilities could improve accountability and consistency in the current structure; other steps could be taken to mitigate the disadvantages of a consolidated structure. Furthermore, a comprehensive study of EPA's organization, as provided for in legislation proposing the creation of a Cabinet department, would permit an evaluation of the agency's organization for enforcement within a broader context.

Principal Findings

Advantages and Disadvantages of Current Organization

One advantage of the current organizational structure, according to many officials, is that it places an enforcement component in each of EPA's program offices. This distribution of staff simultaneously creates a widespread enforcement presence in the agency and facilitates the writing of permits and regulations with strong enforcement provisions. As enforcement staff work alongside staff who write permits and regulations, conflicts can be resolved early and some need for intraagency coordination can be eliminated.

Another advantage of the current organization is that it allows enforcement to be balanced with other program objectives. According to several officials, enforcement attorneys are likely to take on cases that can be won, without regard for their effect on overall programs, whereas program managers are apt to use enforcement as a tool to achieve larger program goals.

Some disadvantages of a decentralized organization for enforcement are that enforcement may be subordinated to competing program goals and that agencywide enforcement policies may be treated inconsistently. Additionally, as GAO's earlier report and others have suggested, accountability for enforcement is ambiguous because many people share enforcement responsibilities.

Advantages and Disadvantages of Consolidation

Although officials generally believed that consolidation would increase the focus and accountability given to enforcement within EPA, they did not all consider this effect beneficial. The consolidation of enforcement within one office or division, some feared, could reduce the accountability of program managers for achieving program initiatives, since they would have less control over enforcement as a tool to control pollution.

Many agreed, however, that consolidation would increase consistency in enforcement policies and implementation and would help to resolve conflicting views. Some industry officials, for example, said that they would favor a consolidated office, particularly at the regional level, so that federal enforcement actions would be more consistent.

Consolidation would also facilitate multimedia enforcement, or the taking of simultaneous actions against a facility under a number of different environmental statutes. Currently, most inspections and enforcement actions are conducted for a single program, such as air, even though facilities are likely to be emitting pollutants into other environmental media, such as water or land. Taking multimedia enforcement actions, which now requires coordination of enforcement staff among program divisions, would thus be simplified under a single enforcement division.

Other Organizational Improvements

Aside from modifying its organization for enforcement, EPA could take several steps to improve the effectiveness of its enforcement operations. For example, as GAO's penalty report recommended, the Administrator could increase consistency and accountability by instituting better

monitoring of the regions and by assigning responsibility to individuals or offices for taking corrective actions. If a consolidated enforcement organization were adopted, EPA could introduce measures to ensure that overall program goals were not ignored as enforcement gained influence.

Both House and Senate bills to create a Cabinet department of the environment have called for a commission to examine and make recommendations on a number of organizational and management issues. Such a commission, which GAO has endorsed in previous testimony, could also consider the most appropriate organization for enforcement in the context of other organizational changes for a new department. Even if EPA remains an agency, the Administrator may wish to examine broad organizational changes that would improve its ability to adopt a more integrated approach to environmental protection—a need identified in earlier GAO work.²

Recommendation

GAO is not recommending which organizational structure EPA should adopt because each structure reviewed here has advantages and disadvantages and any decision to modify the existing organization must be made in the context of overall agency goals and organizational decisions. Nonetheless, GAO continues to recommend that the Administrator make clear which officials are to be held accountable for ensuring adherence to agency penalty policies. Furthermore, as part of legislation to create a Cabinet department of the environment, GAO continues to support the formation of a commission of experts to study and recommend overall organizational changes.

Agency Comments

GAO discussed the facts in this report with EPA's senior enforcement officials, who generally agreed with the information presented. However, as requested, GAO did not obtain written agency comments on a draft of this report.

²Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 1988).

Contents

Executive Summary		2
Chapter 1		8
Background	EPA's Overall Organization	8
	How Enforcement at EPA Works	10
	EPA's Enforcement Organization	11
	Recent EPA Enforcement	14
	Objectives, Scope, and Methodology	15
Chapter 2		17
Organizational	Areas of Enforcement Affected by Organizational Structure	17
Effectiveness of	Advantages and Disadvantages of the Current	17
Current and	Organizational Structure	
Consolidated	Advantages and Disadvantages of a Consolidated	21
Enforcement	Enforcement Structure	
Structures	Officials Differ in How They Weigh Advantages and	28
	Disadvantages	
	Alternatives to Reorganization Can Bring About	28
	Improvements	
	Conclusions	30
Chapter 3		31
Other Factors to	Many Factors Affect Success of an Enforcement	31
Consider in Weighing	Organization	
Reorganization	Legislative Proposals Create Opportunities for Studying	32
	EPA's Organization	
	Conclusions	33
Appendix	Appendix I: Major Contributors to This Report	36
Figures	Figure 1.1: Overall Organization of EPA's Headquarters and	9
	Regional Offices	
	Figure 1.2: Current and Former Organizations With	12
	Responsibility for Enforcement	
	Figure 2.1: Principal Advantages and Disadvantages of	18
	Current Organization	
	Figure 2.2: Principal Advantages and Disadvantages of a	23
	Consolidated Organization	
	Figure 2.3: Possible Corrections to Organizational	29
	Disadvantages	

Abbreviations

EPA	Environmental Protection Agency
OMB	Office of Management and Budget
OPPTS	Office of Prevention, Pesticides, and Toxic Substances

Background

One of the basic responsibilities of the Environmental Protection Agency (EPA), as a regulatory agency, is the enforcement of federal environmental laws and regulations. Enforcement is one of the EPA Administrator's top priorities, and the agency believes that enforcement is currently at record levels. Nevertheless, in a recent review of EPA's penalty practices, we found an absence of clear accountability for adhering to agency penalty policies, which we ascribed, in part, to the agency's diffuse enforcement organization. During the past 8 years, EPA officials, including each of the agency's administrators, have at various times considered reorganizing EPA's enforcement responsibilities. A proposal for reorganization was presented to the EPA Administrator last year but was not adopted.

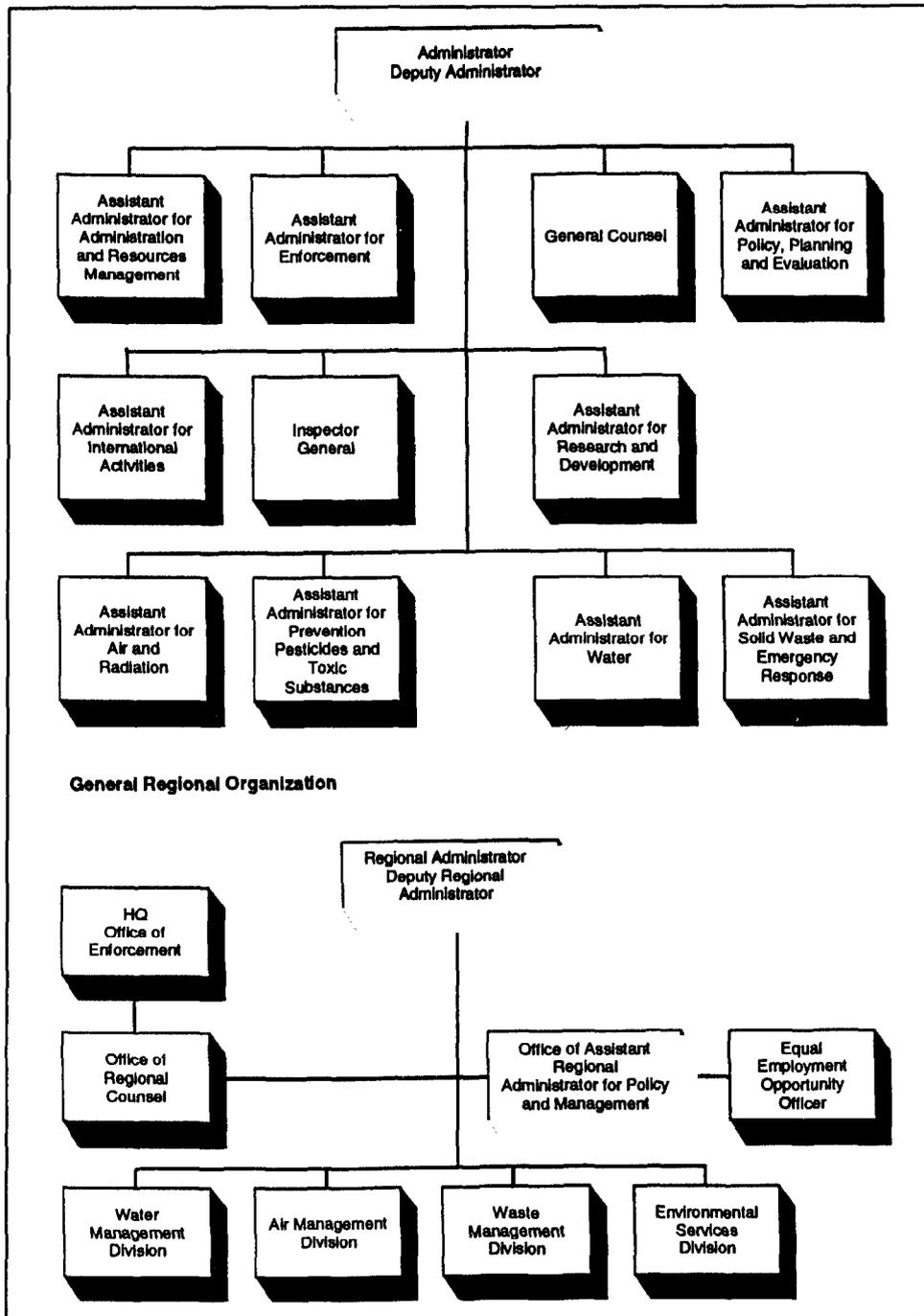
EPA's Overall Organization

The Environmental Protection Agency was created in 1970 as a regulatory agency combining environmental protection duties previously scattered through several federal agencies. Although EPA was initially responsible for just a few environmental statutes—principally the Clean Air Act and the Clean Water Act—its responsibilities grew over the next 20 years to include almost a dozen major environmental laws, including the Resource Conservation and Recovery Act of 1976, the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund).

EPA's organization consists of 11 offices at headquarters and 10 regional offices (see fig. 1.1). Four of these headquarters offices—Air and Radiation; Water; Solid Waste and Emergency Response; and Prevention, Pesticides and Toxic Substances—are program offices, each devoted to a particular environmental medium or substance and to the statute or, in some cases, statutes that pertain. Other offices include the Office of Enforcement, the Office of the General Counsel, and offices responsible for research and development, administration, international activities, evaluation, and support functions.

**Chapter 1
Background**

Figure 1.1: Overall Organization of EPA's Headquarters and Regional Offices



Source: EPA.

The regional offices are generally organized into divisions that correspond to three of the four program offices. The pesticides and toxic substances programs are housed in either the Air and Radiation Division or in the Environmental Services Division. The environmental services division provides analytical laboratory support services for the regional program divisions, among other things. All attorneys in the regions—both enforcement and general counsel—are housed in the Office of Regional Counsel.

How Enforcement at EPA Works

Once the Congress enacts an environmental statute, EPA must promulgate regulations to implement the law, and the regulations must be written specifically enough to be enforced. Some environmental programs, such as the Toxic Substances Control Act, statutorily require sole federal enforcement, but for most environmental laws, EPA delegates to states and localities the authority to monitor compliance and enforce environmental regulations. As a result, over 70 percent of environmental enforcement actions are taken by states that EPA has approved to administer certain environmental programs. EPA is then responsible for overseeing state enforcement efforts but does not take direct enforcement action unless a state requests EPA's help or EPA judges that a state has not taken an appropriate enforcement action, among other reasons. EPA is also responsible for enforcing environmental programs in states that have not been delegated the authority to administer these programs. For example, Florida has been authorized to administer a portion of the hazardous waste program, but not a water pollution control program. EPA is therefore responsible for monitoring Florida's hazardous waste enforcement efforts but must directly enforce the federal water laws.

Some environmental laws, such as the Clean Air Act and the Clean Water Act, require that EPA or a delegated state issue permits to facilities to control the type and quantity of pollution that a facility generates. Like regulations, permit conditions must be carefully written so that state or EPA enforcement staff can easily determine upon inspection whether a facility is meeting its permit conditions.

EPA also develops policies that provide direction to EPA offices and regions for interpreting and enforcing environmental regulations. EPA's Civil Penalty Policy, for example, provides the basis for calculating civil penalties to be assessed against facilities. In addition, the agency can develop enforcement initiatives to focus on a certain pollutant, geographic

area, or industry. Recently, for example, EPA undertook a series of major enforcement actions to reduce lead pollution.

When EPA has primary enforcement authority, regional program staff conduct inspections and, in conformance with national enforcement policy, decide what type of enforcement action, if any, to pursue. Some actions are filed with EPA to be settled or tried by EPA's administrative law judges. Other enforcement actions, including criminal cases or cases to be tried or settled in federal court, are generally prepared at the regional level, reviewed at headquarters, and referred to the Department of Justice.

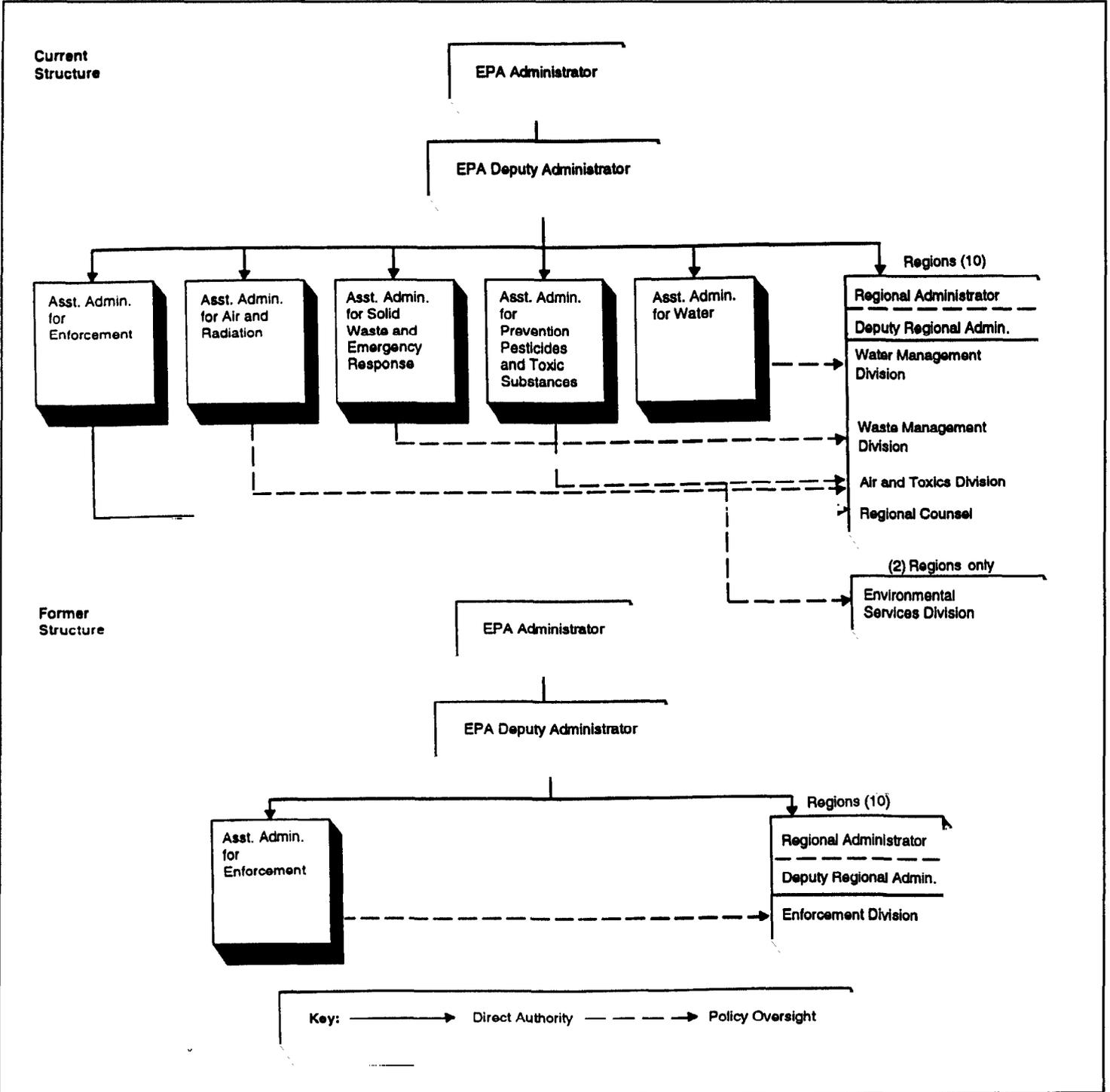
EPA's Enforcement Organization

In the mid-1970s, enforcement for all regulatory programs was centralized within headquarters in the Office of Enforcement. This office was responsible for, among other things, developing and overseeing enforcement policies and practices across the agency, while the program offices were responsible for developing program standards and regulations. At the regional level, a single division director, who reported to the regional administrator, was responsible for inspecting facilities and enforcing regulations in all regulatory programs. The rationale for this structure was that enforcement cut across all programs and that a consolidated enforcement office gave the function more focus. Program divisions in the regions were responsible for reviewing and overseeing state programs and administering grants to states to help them carry out their programs.

Then, in reorganizations in 1981 and 1983, the agency moved responsibility for enforcement at headquarters to the individual program offices and did away with the regional enforcement divisions (see fig. 1.2). At headquarters, these reorganizations left the Office of Enforcement with a core of legal staff for developing enforcement policy and reviewing enforcement cases going to the Department of Justice, but with little line authority over any of the program offices. Technical enforcement staff, including engineers and environmental scientists, were moved to the program offices, which became responsible for reviewing regional enforcement and developing enforcement policy for their programs. Thus, for example, the Office of Water became responsible not only for writing regulations but also for enforcing them.¹

¹Both legal and technical enforcement staff in the Office of Mobile Sources were transferred to the Office of Air and Radiation.

Figure 1.2: Current and Former Organizations With Responsibility for Enforcement



In each region, the Office of the Regional Counsel, which had previously served only as legal counsel to the regional administrator, acquired the legal enforcement staff responsible for identifying violations of environmental laws and preparing enforcement cases. The individual program divisions acquired the technical enforcement staff and so became responsible for inspecting facilities, determining whether facilities were meeting the conditions of their permits, and working with the legal staff to prepare the evidence and technical support for an enforcement action.

Although critics assert that the goal of the two reorganizations was to weaken enforcement at a time when the agency was emphasizing voluntary compliance, the stated purpose of the reorganization was to incorporate an enforcement presence in the program offices and give them responsibility for all elements of their programs. In addition, as part of an agencywide initiative to delegate responsibility to those nearest the source of pollution, each regional administrator was given responsibility for enforcement in his or her region.

After these reorganizations, all three succeeding EPA administrators considered consolidating enforcement but chose not to do so. According to EPA records and officials who were involved in these decisions, both the Administrator from 1983 to 1985 and the Administrator from 1985 to 1989 examined the possibility of restoring the earlier organizational structure. Both, however, decided that the disruptive effects of such a reorganization would outweigh the benefits, especially because staff had been demoralized by the previous reorganization and the experience was fresh in employees' minds. The administrators also reportedly believed that they did not have enough time remaining in their terms of office to see a reorganization through.

Another recommendation to consolidate EPA's enforcement organization came in 1988 from the Senate Committee on Environment and Public Works' Subcommittee on Superfund and Environmental Oversight. After investigating environmental violations at a gas pipeline company and finding, among other things, that poor communication between technical and legal staff had hindered EPA's resulting enforcement actions, the Subcommittee recommended reunifying technical and legal enforcement staff and restructuring the agency along the lines of its previous enforcement organization.

The most recent proposal for reorganization was made in 1990 by the then-Assistant Administrator for Enforcement. This proposal, however,

was for a partial consolidation, which would have consolidated enforcement at headquarters but would not have changed the regional organization.² This suggested reorganization was intended to increase accountability and consistency in enforcement by giving one headquarters office both the responsibility and the resources for enforcement, without causing as much disruption as a full consolidation. Here too, according to one high-level EPA official, timing was a consideration; the Administrator was reportedly reluctant to undertake such a large change so far into his term.

Recent EPA Enforcement

Overall, enforcement has received renewed attention under the current EPA administration. The incumbent Administrator ranked enforcement as one of his top five priorities for the agency when he took office, and he has promoted several enforcement initiatives, including multimedia enforcement, or the taking of simultaneous enforcement actions in a facility under a number of different environmental statutes. In 1991, the Office of Enforcement published a 4-year strategic plan³ and a blueprint for improving enforcement over the coming decade⁴ that emphasized strong enforcement practices and identified several areas for improvement. The agency has announced record numbers of civil and criminal enforcement cases in fiscal year 1991, as well as record fines. Many agency officials believe that enforcement is stronger now than it has ever been.

Despite these accomplishments, our June 1991 review of EPA's enforcement program found a number of problems.⁵ Focusing on EPA penalty policies and practices, we found that even though an agency policy specifies that penalties for significant violations should be at least as great as the benefits that a company would derive from not being in compliance, a majority of penalty cases concluded in fiscal year 1990 contained no evidence that this economic benefit had been calculated or assessed. Many factors may deter regulatory officials from following EPA's penalty policy,

²This proposal excluded the Office of Mobile Sources, which already integrates legal and technical enforcement staff. It also excluded the Superfund program, whose enforcement focuses on locating responsible parties to pay for cleanup of hazardous waste sites and thus differs from traditional enforcement.

³Enforcement Four-Year Strategic Plan: Enhanced Environmental Enforcement for the 1990's, Office of Enforcement, U.S. Environmental Protection Agency (Washington, D.C.: Feb. 1991).

⁴Enforcement in the 1990's Project: Recommendations of the Analytical Workgroups, Office of Enforcement, U.S. Environmental Protection Agency (Washington, D.C.: Oct. 1991).

⁵Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained by Violators (GAO/RCED-91-166, June 17, 1991).

we noted, but EPA headquarters does not have enough information to oversee its regional office practices.

Part of the difficulty in oversight, we suggested, stemmed from the diffuse organization for enforcement within EPA, under which no one office is clearly accountable for penalty practices. We concluded that EPA needed to have clearer lines of responsibility for taking corrective action. Although we did not advocate a consolidated enforcement organization, reasoning that such a move should be based on consideration of more than the implementation of penalty policies, we nevertheless recommended that the EPA Administrator identify the individuals or offices responsible for monitoring penalty practices and for taking any corrective actions indicated.

Objectives, Scope, and Methodology

In response to the findings of our June 1991 report, the Chairmen of the House Committee on Government Operations and its Environment, Energy, and Natural Resources Subcommittee asked us, in a letter dated August 2, 1991, to evaluate the advantages and disadvantages both of EPA's current organization for enforcement and of the alternative organization proposed by the former EPA Assistant Administrator for Enforcement that would consolidate headquarters responsibilities for enforcement. The Chairmen were particularly interested in these questions because the Congress is currently considering conferring Cabinet status on EPA, and the agency's organization for enforcement would affect the efficiency of its operations as a department.

Because such a review would have required considerable time and resources, we did not evaluate the overall effectiveness of EPA's enforcement efforts and relate it to EPA's organization. Instead, we chose several general criteria commonly used to measure organizational effectiveness: accountability, consistency, efficiency, conflict resolution, and relations with outside groups. We chose these criteria after reviewing organizational management literature and EPA's criteria for organizational structure.

Nearly 80 officials with enforcement responsibility served as our principal source of information on the advantages and disadvantages of the two different enforcement organizations. We interviewed the assistant administrators and/or deputy assistant administrators in the Offices of Enforcement; Air and Radiation; Water; Solid Waste and Emergency Response; and Prevention, Pesticides, and Toxic Substances. In addition,

we interviewed the heads of the enforcement offices and of divisions within these offices as well as representatives of the Office of the Regional Counsel and of the program divisions in EPA regions 3, 4, and 5. We also interviewed EPA's Acting General Counsel, an official from EPA's Management and Organization Division, former EPA enforcement officials, and the Associate Deputy Administrator. Almost all of these officials are attorneys and some are engineers or scientists; some came from other federal agencies, including the Department of Justice; and many worked in EPA before the 1981 reorganization. Information on the number of people who might be involved in a reorganization came from EPA's Office of the Comptroller.

To obtain the perspective of outside groups, we talked to officials in the Maryland Department of the Environment, including the Secretary who also chairs the State/EPA Enforcement Committee. We also talked with representatives of industry and environmental groups. Because of time and resource constraints, we did not examine other enforcement agencies or speak with a larger number of people outside EPA.

We conducted our review between August 1991 and December 1991 in accordance with generally accepted government auditing standards. We discussed the factual information contained in this report with responsible officials at EPA. These officials agreed with the facts presented, and their views have been incorporated where appropriate. As agreed, however, we did not obtain written agency comments on a draft of this report.

Organizational Effectiveness of Current and Consolidated Enforcement Structures

Despite the differences in their current positions and professional experience, the EPA officials with whom we spoke generally agreed on the aspects of enforcement that are most affected by organizational structure as well as on the effects of the current and a consolidated organization of enforcement responsibilities. Officials differed, however, in the importance they attached to corresponding costs and benefits. Each organization has its weaknesses, however, and no matter which organization is adopted, steps can be taken to compensate for its shortcomings.

Areas of Enforcement Affected by Organizational Structure

In our meetings with EPA officials, we found that their views on the current and consolidated enforcement organizations centered around a common set of issues and concerns:

- the enforceability of permits and regulations;
- the integration of enforcement with other program goals;
- accountability, both for enforcement and national program goals;
- consistency of enforcement policies and practices;
- relations with delegated states and the regulated community; and
- the quality and timeliness of enforcement actions.

Advantages and Disadvantages of the Current Organizational Structure

According to EPA officials, the current organizational structure for enforcement has several important advantages and disadvantages, which are summarized in figure 2.1. On the one hand, the current structure promotes the integration of enforcement with other agency functions and allows program managers to balance enforcement with other program goals. On the other hand, the current structure requires enforcement to compete with other program goals for priority and may result in inconsistency and lack of clear accountability for enforcement.

Figure 2.1: Principal Advantages and Disadvantages of Current Organization

Advantages

- Integrated in program offices, enforcement has widespread presence.
- Program manager can balance enforcement with other program goals.
- Program regulatory and enforcement staff can work together to develop enforceable regulations and permits and to resolve conflicts that arise.
- Program manager's responsibility for enforcement increases his/her accountability for program goals.

Disadvantages

- Because enforcement responsibility is diffuse, accountability is difficult to fix.
- Program manager may not give enforcement sufficient priority.
- Because many offices are responsible for developing enforcement policy, inconsistency may result.
- Program managers may sacrifice enforceability in the drafting of regulations and permits to meet deadlines.

Source: GAO interviews with EPA officials.

Enforcement Is Integrated With Other Functions

According to a number of officials, enforcement is strengthened by making it an integral part of program functions, as is the case under the current organization. When many people and offices are responsible for enforcement, these officials argue, enforcement takes on more widespread importance and so is more effectively implemented than when only one office is responsible for it. This principle was applied in a recent reorganization within a regional air program division in which enforcement responsibility was delegated to each of the division's branches rather than being centralized in only one of the division's branches.

Some officials said that the current enforcement organization also facilitates the integration of enforcement with the development of regulations and permits. The ability to take effective enforcement actions

depends on regulations and permits whose provisions are precise and carefully crafted and clearly distinguish between compliance and noncompliance. When enforcement staff work alongside the staff responsible for writing permits and regulations, officials told us, conflicts can be resolved internally and therefore more efficiently than if the different staff worked in separate offices. When differences arise, they can be elevated and resolved within the program office or regional program division without having to be settled by the Deputy Administrator or deputy regional administrator, as would be necessary if the enforcement staff worked in a separate program office or division.

Recently, for example, the Office of Prevention, Pesticides and Toxic Substances (OPPTS) submitted draft regulations for protecting workers from exposure to pesticides to the Office of Management and Budget (OMB) for its review. According to an OPPTS official involved, the Office of Pesticides Programs had worked closely with the Office of Compliance Monitoring to ensure that these regulations were enforceable. OMB returned to OPPTS with questions about the enforcement provisions of a section of the regulations requiring workers to have documentation certifying that they have been trained to apply pesticides safely. Because OPPTS had its own enforcement staff, it was able to resolve OMB's enforcement concerns before it forwarded the draft regulations for review to other EPA offices, including the Office of Enforcement. Although the Office of Enforcement could later have resolved OMB's concerns, the current organization of OPPTS allowed EPA to respond earlier in the review process to the issues that OMB had raised.

However, some officials have expressed concern that leaving the final decision on enforceability in the hands of an assistant administrator or program division director may compromise the quality and hence the enforceability of the rule or permit because that official may feel pressured to meet a regulatory deadline or to issue more permits. The Office of the Regional Counsel and the Office of Enforcement currently carry out separate enforcement reviews of some permits and regulations, which to some extent may mitigate this potential conflict of interest, but these reviews are only legal and do not address technical concerns, such as whether a regulation is specific enough to generate the scientific evidence that is needed to determine whether a facility is complying with an environmental law. Officials in the Office of Enforcement said that when they review a regulation for legal enforcement concerns, they often discover that its technical provisions are not adequate to ensure that EPA or a delegated state can measure whether a facility is in compliance.

Enforcement Can Be Used to Achieve Overall Program Goals

According to some EPA enforcement officials, combining enforcement with other program responsibilities enables program managers in headquarters and the regions to balance enforcement with other program goals. This, in turn, may improve program results.

For example, Office of Water officials told us about the need for exercising good judgment in deciding what enforcement actions to pursue while the Congress is considering legislation to curtail EPA's role in wetlands protection. A number of officials believe that enforcement attorneys, on their own, look at issues differently from program officials and may be more likely to select cases on the basis of their ability to be won, rather than on the basis of their effect on the overall program. The Office of Water officials told us that until EPA educates the public about the public's responsibilities in protecting wetlands, the agency's aggressive pursuit of enforcement actions, particularly against individual farmers and other small entities that come under wetlands regulations, could jeopardize the entire future of the program. Program officials fear that if enforcement were housed in a separate office independent of the program, this larger perspective would be lost.

Another advantage of the current system, according to some officials, is that having enforcement staff in the program offices and divisions allows program managers to be accountable for total program results and to use enforcement resources to achieve program objectives. The Assistant Administrator, OPPTS, told us that if, for example, she wanted to focus on strengthening licensing requirements for asbestos removal contractors, she could target her enforcement resources to support her program objective.

Precisely because enforcement is only one of several program responsibilities under this organizational structure, however, its importance could be deemphasized if the program manager were not enforcement-minded. Several people believe that this is currently the case. One enforcement official, in fact, said that environmental enforcement at EPA "is all sizzle and no steak." Officials also pointed out that, just as program managers can use enforcement resources to meet program objectives, so they can use resources allocated to enforcement for other purposes. However, one high-ranking official said that if the Administrator emphasized enforcement, enforcement would be given attention, no matter what organizational structure was in place.

In addition, because program managers control enforcement resources, the current structure may create or permit inconsistencies in enforcement policies and actions among EPA's programs. This discretion also makes accountability for enforcement difficult. Consistent enforcement by EPA is important to ensure equitable treatment of the regulated community. Under the current structure, however, enforcement guidance may come from several directions: Regional counsel staff may receive guidance from the Office of Enforcement, regional program enforcement staff take direction from the headquarters program offices, and both regional counsel and regional program enforcement staff are ultimately accountable to the regional administrator. Our meetings with EPA officials responsible for enforcement revealed that these officials hold differing views on enforcement: Whereas some emphasize technical assistance and education to ensure compliance, others stress direct enforcement actions to deter violations. Consequently, enforcement practices can be inconsistent, and, as our report on penalty practices found, no one is clearly answerable.

It is important to recognize, however, that some of the current difficulties in consistency and accountability are related to the agency's overall structure and not simply to its organization for enforcement. Because regional administrators still have wide discretion in enforcement, inconsistencies from one region to another could still occur.

Advantages and Disadvantages of a Consolidated Enforcement Structure

As noted in chapter 1, before the 1981 reorganization, EPA's enforcement responsibilities were consolidated both in the Office of Enforcement at headquarters and in enforcement divisions in each region. The most recent reorganization proposal was for a partial consolidation in which only headquarters enforcement functions would be reorganized. In this scenario, the Office of Enforcement would be responsible for making enforcement policy, reviewing regulations for legal and technical enforceability, reviewing some enforcement cases prepared in the regions, and overseeing national environmental enforcement.

Although some opportunities for efficiencies might ultimately result from reorganizing enforcement, according to EPA's Office of the Comptroller, consolidating enforcement at headquarters would shift 393 staff years from the program offices to the Office of Enforcement, resulting in a total of 837 staff years in that office.¹ If enforcement were consolidated at the regional level as well, a total of 3,196 staff years would be shifted into the

¹A staff year is a full-time staff position or its equivalent.

new enforcement divisions. In one region, an official with responsibility for operations estimated that an enforcement division would be nearly the largest division; it would have 273 staff years, as compared with 275 staff years in the waste division. The next largest division (water) would contain only 146 staff years.

Although reorganizing at headquarters only would require moving fewer staff than would a complete consolidation of enforcement, program division officials in EPA regions say that a partial consolidation would make reporting relationships with headquarters difficult for them. Currently, program officials in the regions must report to two offices: the headquarters program office and the regional administrator's office. A consolidated structure would add a third reporting relationship, requiring the program divisions also to report to the Office of Enforcement on enforcement matters. These officials therefore believe that the enforcement organization should either remain unchanged or be completely consolidated—both at headquarters and in the regions.

Because EPA's responsibilities have changed extensively since the last major reorganization of enforcement and the agency has acquired far greater statutory responsibilities, it is difficult to compare the previous enforcement organization to the current one. In addition, EPA has increasingly delegated enforcement responsibilities to the states and has thus changed from the primary enforcer of federal environmental statutes to a facilitator for state enforcement. Despite these differences, however, a number of those with whom we talked believed that a consolidated organization would present several advantages to enforcement. The advantages and disadvantages of such an organization are summarized in figure 2.2.

Figure 2.2: Principal Advantages and Disadvantages of a Consolidated Organization

Advantages

- Gives enforcement greater accountability and focus.
- Expedites case and policy review and improves quality of cases.
- Provides consistency for national environmental enforcement.
- Increases effectiveness and efficiency in selecting cases, since attorneys work directly with technical enforcement staff.
- Facilitates multimedia enforcement.

Disadvantages

- Reduces accountability of program managers for total program results.
- Reduces ability of program manager to use enforcement to help achieve program goals.
- Removes enforcement "presence" from program offices.

Source: GAO interviews with EPA officials.

Consolidation Would Enhance Accountability and Focus on Enforcement

Among the advantages of consolidating enforcement, some officials cited the increased priority that enforcement would receive as well as an increased accountability for national environmental enforcement that would result from simplifying the chain of command between the staff who develop enforcement policy and the staff who carry it out. As we noted in our June 1991 report, accountability for overseeing EPA's penalty practices is now problematic because 15 offices are responsible and no one office is clearly accountable. If enforcement were consolidated at headquarters, one headquarters office would be responsible for enforcement, and only one headquarters office would develop enforcement policy, whereas, under the current system, the Office of Enforcement develops policy in conjunction with each of the four program offices. The Administrator could then turn to one office, rather than five, for information on enforcement performance.

Although consolidation could enhance accountability for enforcement at headquarters, it would not eliminate the discretion retained by each of EPA's 10 regional administrators to interpret and implement enforcement policy. While facilitating accountability for enforcement, several officials pointed out, consolidation could reduce accountability for entire program results. That is, although the Assistant Administrator for Enforcement would become the focal point for environmental enforcement and could readily be held accountable for enforcement results, the program assistant administrators would lose some of their ability to use enforcement to control pollution and would therefore be less accountable for the results of their programs. The Assistant Administrator for Air and Radiation, for example, could less readily be held accountable for national air quality improvements because this position would no longer control enforcement, a key element of the program.

Besides increasing accountability for enforcement, many officials said, a complete consolidation of enforcement responsibilities would give enforcement more visibility and focus. However, given the current incentive structure and the ways in which EPA measures the effectiveness of its enforcement program, some officials do not believe that the increased visibility would be beneficial for environmental programs as a whole. These officials referred to EPA's enforcement effectiveness measures as "bean counting"—measuring success through numbers and types of enforcement actions rather than through the quality of the actions and their effect on reducing pollution. If these "bean-counting" measures continued under a consolidated enforcement organization, the gap could widen between program goals and enforcement. EPA recognizes the need to move beyond current activity-based measures for enforcement, and one of the Office of Enforcement's goals cited in its strategic 4-year enforcement plan is to find ways to measure the success of enforcement in improving the environment. In addition, some officials were concerned that programs, such as those for pesticides and toxic substances, whose enforcement components represent a very small part of the agency's overall enforcement responsibilities, would receive lower priority in a consolidated Office of Enforcement than they do now as part of a program office.

Consolidation Would Expedite Case and Policy Review and Improve Quality of Cases

Some officials say that consolidating enforcement would reduce the number of officials and the amount of time required to review cases going to the Department of Justice, thereby improving the enforcement process. Enforcement cases that are to be referred eventually to the federal court

are currently reviewed at headquarters by both the program office and the Office of Enforcement. Officials told us that this review is duplicative and requires twice as many people as necessary to concur on the essentials of an enforcement case. These officials said that a consolidated enforcement organization would allow these cases to proceed from the region to the Office of Enforcement with a review requiring less time and expense than the current system requires. Extending consolidation to the regions would further simplify the review process, since enforcement would be contained in one division in each region instead of in both the Office of the Regional Counsel and a program division. If total consolidation were to take place, the quality of all cases—not only of those going to the Department of Justice—would improve, according to some. Enforcement divisions would then be able to select technically and legally stronger cases for enforcement action because enforcement attorneys would be working directly with technical enforcement staff.

In addition, one official noted that since program enforcement staff at headquarters would be part of the Office of Enforcement, enforcement policy could be developed chiefly in the Office of Enforcement without as extensive coordination as is now required. Recently, for example, EPA developed an initiative to control lead pollution. According to one official, EPA's Office of Enforcement had to obtain consensus on the initiative from each of the headquarters program offices as well as from each of EPA's 10 regions before it could begin implementing the initiative. Under a consolidated organization, the Office of Enforcement would have been responsible for developing and implementing the initiative; it would have been expected to consult with the programs and regions but would not have had to obtain their unanimous consent.

Enforcement Policies and Practices Could Be More Consistent

According to some officials, consolidating enforcement at headquarters would allow EPA to apply enforcement policies and actions more consistently across both programs and regions because the Office of Enforcement, rather than both the Office of Enforcement and several program offices, would be responsible for making enforcement policy. Officials acknowledged that a headquarters consolidation would not give the Office of Enforcement any direct authority over regional enforcement actions, since EPA staff in the regions would still be directly accountable to the regional administrator, who reports directly to the agency Administrator. However, because only one headquarters office would be overseeing the regions' enforcement efforts and providing direction in

interpreting policy, the likelihood is greater that regional enforcement actions would be consistent.

Some officials told us that a consolidation at both headquarters and the regions could result in even greater consistency because one regional enforcement division, rather than four program divisions and the Office of the Regional Counsel, would implement enforcement in the regions. A single enforcement division could promote a single regional philosophy of enforcement and, hence, consistent screening and development of enforcement cases, since enforcement attorneys and engineers would share priorities. Nevertheless, because regional administrators are ultimately in charge of enforcement actions in their regions, differences among regions would probably still occur.

A representative of an industry association told us that three of four major corporations that she had contacted favored a complete consolidation of EPA's enforcement responsibilities in order to promote consistency in enforcement policy among regions. The corporations believe that EPA headquarters should have greater control over national enforcement policy and actions. A regional EPA enforcement official with experience in industry agreed that the regulated community would also prefer to deal with a united enforcement front. An official of one company, however, preferred the current enforcement organization, saying that if enforcement divisions were created, program goals could be subordinated to enforcement goals, and the resulting increase in enforcement actions could create antagonism between EPA and the regulated community.

State officials with whom we spoke shared the majority industry view. They told us that they would favor having a consolidated enforcement division at the regional level, rather than the four program offices with which they now deal, to provide a single voice on enforcement. These state officials said that they now receive different information and advice on enforcement cases, depending on which EPA office they call.

A report on EPA's action against a gas pipeline company, prepared by the Subcommittee on Superfund and Environmental Oversight, Senate Committee on Environment and Public Works, also recommended complete consolidation to increase consistency in implementing enforcement policy among EPA's regions. In the pipeline case, technical enforcement staff in a program office had discovered violations at a facility but, according to the Subcommittee staff, had not expeditiously discussed the violations with legal staff in the Office of Enforcement

because they were concerned about keeping control of the case in the program. The report said that a complete consolidation would end "turf battles" arising between the program offices and the headquarters Office of Enforcement. Resolution of these conflicts would, in turn, lead to more consistently selected and expeditiously executed enforcement cases.

Consolidation Would
Promote Multimedia
Enforcement

Many officials said that consolidating enforcement responsibilities would facilitate multimedia enforcement, in which EPA pursues simultaneous enforcement actions under several environmental statutes at a single facility. Currently, most inspections and resulting enforcement actions are conducted for a single program, and a facility receives separate inspections for compliance with permits and regulations in air, water, waste, and toxic substances. Recognizing, however, that pollution may be shifted from one environmental medium to another, EPA has moved toward an integrated approach to environmental enforcement and has aimed to have 25 percent of enforcement actions in fiscal year 1991 consist of multimedia cases.

The benefits of a regional enforcement division for multimedia enforcement were considered recently by an agency multimedia enforcement work group, set up at the request of the Deputy Administrator in the spring of 1991. The group, which consisted of enforcement managers and senior staff from regional and headquarters offices, observed that the agency's current media-specific organization makes multimedia enforcement goals more difficult to achieve. Accordingly, it examined several alternative organizational approaches that regions could use for multimedia enforcement, including the establishment of an enforcement division in each region. The task force concluded that although a regional enforcement division ranked "very high" for facilitating effectiveness, efficiency, and accountability for multimedia actions, it ranked "lower than low" for disrupting existing operations because it would require a considerable number of staff to move from their established positions in the Office of the Regional Counsel and the program divisions.

Some officials cautioned that organizational changes should not be made simply to facilitate multimedia enforcement, pointing out that multimedia actions will probably never account for more than about 25 to 30 percent of all enforcement actions. In addition, they noted that some EPA regions are developing their own mechanisms within the current organizational structure to handle multimedia enforcement. Other officials cautioned that

in order to improve multimedia coordination, enforcement staff from all media have to be able to work together and enforcement divisions should not be organized along program lines as they were before 1981.

Officials Differ in How They Weigh Advantages and Disadvantages

Although many of the officials with whom we spoke agreed on the advantages and disadvantages of the various organizational structures, they disagreed on the value of reorganizing the agency's enforcement functions. Two major trains of thought emerged. Some officials favored consolidation because they believed that the increased emphasis on enforcement that it would provide would clearly meet the agency's goals. Others, however, thought that the current organization would better enable the agency to achieve its ultimate goal of widespread compliance by allowing it to balance enforcement with other regulatory measures.

Alternatives to Reorganization Can Bring About Improvements

To mitigate the weaknesses inherent in the structure of both the current and consolidated enforcement organizations, EPA could adopt remedies that would not require reorganization. Figure 2.3 outlines possible solutions to some of the organizational problems reported in this chapter. For example, to address the lack of consistency and clear accountability for enforcement under the current organization, the EPA Administrator could institute better monitoring of regional practices and identify individuals or offices within the agency to be responsible for correcting indicated shortcomings. We, in fact, made this recommendation in our June 1991 report to ensure that EPA's penalty policy is followed. Although EPA, in responding to our report, did not agree that such an action was necessary, maintaining that accountability was already clear, we continue to believe—and this review confirms—that vague accountability for enforcement is a weakness inherent in EPA's current organization.

Other than the measures that we have recommended elsewhere, those listed here are meant to be illustrative, and other means might be found to achieve the same end. In its report entitled Enforcement in the 1990's Project, for example, EPA identified some further nonreorganizational remedies to weaknesses in the current organization of enforcement responsibilities.

Figure 2.3: Possible Corrections to
Organizational Disadvantages

Disadvantages

Current Organization

- Enforcement is not focused and may not receive sufficient priority
- Accountability is vague for enforcement policies and practices, and inconsistency may result from diffuse decision-making

Consolidated Organization

- Program managers are not accountable for total program results
- Program managers are limited in their ability to use enforcement to help achieve program goals

Remedies

Current Organization

- Require greater involvement of Office of Enforcement staff in regulatory work groups to ensure independent check
- Clearly define enforcement roles and responsibilities
- Monitor regional enforcement performance and provide feedback

Consolidated Organization

- Define program-specific performance expectations for enforcement offices
- Have program offices participate in evaluating staff performance
- Involve program offices in developing enforcement targets and goals

Conclusions

While neither the current organization for enforcement nor a consolidated structure is problem-free, neither is so flawed as to be unworkable. To ensure the effectiveness of either structure, EPA needs to be aware of potential shortcomings and take steps to compensate for them. For example, if the agency retains the current organization, then it will have to adopt additional measures to ensure accountability and consistency in enforcement policies and practices. As we recommended in our June 1991 report, the EPA Administrator should identify who will be responsible for monitoring penalty practices and taking any corrective actions indicated. Likewise, if enforcement functions are consolidated, then some means—performance ratings, reporting mechanisms, or some other procedures—will have to be found to ensure accountability for program results.

Other Factors to Consider in Weighing Reorganization

The choice of an organizational structure for enforcement at EPA ought not to be made in isolation but should be based upon consideration of the future organizational structure of the agency as a whole, upon organizational values, and upon a reorganization's effect on staff motivation. Under legislation proposed to elevate EPA to a Cabinet department, a commission to examine agency organization and management and recommend improvements could be created and could evaluate the organization for enforcement within the context of the entire department's organization. Even if EPA remains an agency, the Administrator may wish to undertake such an examination.

Many Factors Affect Success of an Enforcement Organization

Many of the EPA officials with whom we talked noted that many factors besides organizational structure affect the success of an enforcement organization. Among the most important of these factors are the quality and motivation of the staff. The effect of a reorganization on staff motivation and productivity is difficult to predict. Many EPA employees retain strong and unpleasant memories of the 1981 reorganization, recalling it as one of the most traumatic periods of their careers—a period that required them to adjust to new positions and an apparent disinterest in enforcement. Nonetheless, some officials believe that a reorganization of enforcement now would not be as disruptive as the 1981 reorganization, since it would be viewed as an effort to improve, rather than to limit, enforcement.

An official from EPA's Management and Organization Division said that the disruptive effects of a large reorganization, such as a consolidation of enforcement at headquarters or in both headquarters and the regions, could last up to a year. During this period the productivity of enforcement—the number of inspections completed and enforcement actions taken—could decline. He said that a reorganization would slow down the daily functions of an office while staff adjusted to their new positions, co-workers, and supervisors. A reorganization could also depress morale if it broke up successful working relationships or placed some staff lower in the agency's hierarchy, even if it did not demote them. The official added that long-term support from EPA's top management would be crucial to the success of any reorganization. To ensure such long-term support, some officials agreed, a reorganization would optimally take place at the beginning of a new EPA administration.

Another factor that can affect the success of any organizational structure is the extent to which its processes mesh with organizational values. EPA

has traditionally sought consensus among the offices involved in a situation before making a decision. An organizational structure that does not seem optimally efficient and effective may be reliable if it accommodates the agency's decision-making culture. For example, a reorganization of enforcement that reduced the number of people involved in making enforcement decisions might improve efficiency but could ultimately create conflicts between or among EPA's offices if it ignored EPA's tradition of attaining consensus before acting.

Finally, the extent to which an enforcement organization is integrated with other agency organizations could influence its success. Any agencywide changes in management and organization that could occur if the Congress elevated EPA to a Cabinet department would have implications for EPA's enforcement organization.

Legislative Proposals Create Opportunities for Studying EPA's Organization

In the 101st Congress, proposals for conferring Cabinet status on EPA included both House and Senate bills to create a department for the environment, and the Senate passed such a bill in the 102nd Congress. All three bills recognized that improvements could be made in EPA's organization and management and provided for the creation of a commission of experts to make recommendations. H.R. 3847, for example, which was passed by the House in March 1990, provided for a Commission on Improving Environmental Protection to analyze and make recommendations on changes in the agency's organization that would not only reassess its current organization by media and function but also determine whether to consolidate within the proposed department programs related to EPA's mission that are now outside EPA's jurisdiction. In our testimony on the proposed legislation, we endorsed the idea of such a study commission, pointing out that our previous work had highlighted a need to consider an appropriate structure for EPA.

Given its broad charge, this study commission could consider the most effective organization not only for the proposed department's enforcement responsibilities but also for other responsibilities whose organization has not been considered to date. The commission might, for example, consider whether to reorganize the department entirely by function, so that instead of having program offices dedicated to environmental media, the department might have a single office of regulatory development, an office of enforcement, an office of science and research, and so on. Alternatively, the department might be organized by pollution sectors—industry, transportation, and municipalities, for example—or by geographic regions.

The commission could also consider the roles and responsibilities of headquarters and regional offices. The most appropriate organization for enforcement could then be considered within this broader context.

Even if a Cabinet department of the environment is not created, further examination of some of these organizational issues may benefit EPA. Our 1988 general management review of the agency noted that one of the original goals in creating EPA in 1970 was to integrate the numerous single environmental medium programs then in place, such as air and water pollution programs, into a single organization.¹ For a variety of reasons, however—including limited scientific knowledge and lack of a statutory base for comprehensive management—this approach was not pursued. Yet the need for an integrated approach to environmental problems remains. For example, removing pollutants from wastewater and disposing of the sludge on land could simply transfer the pollution from the water to the earth rather than eliminate or prevent the pollution.

Recognizing the interrelationship of environmental media, EPA has begun to adopt integrated approaches to environmental problems, despite the constraints imposed by existing, single-medium legislation. Multimedia enforcement, as discussed in chapter 2, is an example of this cross-media approach to pollution. Just as a consolidated enforcement organization might facilitate multimedia enforcement, so other organizational changes might make it easier for EPA to integrate environmental programs in other respects—to, for example, write permits for controlling pollution in air, water, and land, instead of in just one of these media.

Conclusions

If the Congress acts to create a Cabinet department for the environment, it can also provide for an examination of the existing agency's organization for essential functions. Under the auspices of a study commission, experts can consider how best to structure the whole department, including the enforcement functions. We continue to support the creation of such a study commission, and we continue to see a need for resolving these organizational questions.

But even if the Congress does not create a Cabinet department, EPA may still benefit from a critical examination of its organization, which may enable the agency to assume a more integrated approach to environmental problems. Within this context, the study could include an examination of

¹Environmental Protection Agency: *Protecting Human Health and the Environment Through Improved Management* (GAO/RCED-88-101, Aug. 1988).

Chapter 3
Other Factors to Consider in Weighing
Reorganization

EPA's enforcement organization, as well as of the relationship between headquarters and the regional offices. Practically speaking, the current Administrator may be too close to the end of his term to act on the recommendations that such a study might produce, but the study's results may still be of use to him or his successor.

Major Contributors to This Report

Resources,
Community, and
Economic
Development
Division,
Washington, D.C.

Peter Guerrero, Associate Director
Bernice Steinhardt, Assistant Director
Mary Pniewski, Assignment Manager
Angela Sanders, Evaluator-in-Charge

Ordering Information

The first copy of each GAO report is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20877**

Orders may also be placed by calling (202) 275-6241.

United States
General Accounting Office
Washington, D.C. 20548

Official Business
Penalty for Private Use \$300

First-Class Mail
Postage & Fees Paid
GAO
Permit No. G100