



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460  
NOV 17 2006

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Coordination of Federal Facility Enforcement Actions with OECA

FROM: Granta Y. Nakayama   
Assistant Administrator

TO: Regional Senior Enforcement Managers  
Regional Federal Facilities Senior Managers  
Regional Counsels  
Regional Air Division Directors  
Regional Waste Division Directors  
Regional Water Division Directors

EPA has focused for many years on ensuring national consistency in the federal facilities enforcement program. Because of the national significance of actions taken at these facilities, OECA has periodically reaffirmed the importance of Regional notification to the Federal Facilities Enforcement Office (FFEO) of any proposed enforcement actions so that those actions can be coordinated with Headquarters. This notification often facilitates OECA collaboration during Regional action planning and enables us to respond knowledgeably to related issues which might be raised by affected federal agencies.

Accordingly, we want to affirm that the following attached guidance documents remain applicable and should be followed with respect to any proposed enforcement activities at federal facilities:

- Guidance on Coordination of Federal Facility Enforcement Actions with the Office of Enforcement and Compliance Assurance (Michael M. Stahl, September 17, 1997)
- OECA/Regional Procedures for Civil Judicial and Administrative Enforcement Case Redelegation (Robert I. Van Heuvelen, November 9, 1994)

- Guidance on Coordination of Federal Facility Enforcement Actions with the Office of Enforcement (Thomas L. McCall, Jr., October 20, 1992), and Enforcement Actions at Federal Facilities (William K. Reilly, July 24, 1991).

While we have a strong existing partnership with those in the Regions who attend to federal facility matters, this reminder may be especially important now, given that we together have increased our attention to this sector over the past few years.

I have attached, for your convenience, the names of FFEO staff who serve as liaisons on federal facility compliance and enforcement matters to the EPA Regional offices. If you have any questions about this coordination activity, please contact Dave Kling, FFEO's director, at (202) 564-2510.

Attachments

cc: Catherine R. McCabe  
Lynn Buhl  
David J. Kling  
Walker B. Smith  
Susan E. Bromm  
Mary Kay Lynch  
Regional Federal Facility Program Managers



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

SEP 17 1997

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Guidance on Coordination of Federal Facility Enforcement Actions  
with the Office Of Enforcement and Compliance Assurance

FROM: Michael M. Stahl *Michael M. Stahl*  
Deputy Assistant Administrator

TO: Waste Division Directors, Regions I-X  
Water Division Directors, Regions I-X  
Air Division Directors, Regions I-X  
Regional Counsels, Regions I-X

During the course of recent Regional reviews, questions arose over the coordination of Federal facility enforcement actions with the Office of Enforcement and Compliance Assurance. In addition, it was learned recently that in several instances the Federal Facilities Enforcement Office (FFEO) received no notice of significant Federal facility enforcement actions. In light of this, the attached coordination guidance originally issued in 1993 is being reissued. The main purpose of coordination guidance is to afford Headquarters an opportunity to prepare to respond to questions from the leadership of the affected Federal agencies and the press regarding EPA's enforcement actions. This guidance will also help to improve coordination between the Regions and FFEO.

Any questions that you have regarding the implementation of this guidance may be directed to Craig Hooks, Director, Federal Facilities Enforcement Office at (202) 564-2510 or your staff may contact Bill Frank at (202) 564-2584.

Attachment

cc: Federal Facility Coordinators, Regions I-X  
Multi-Media Enforcement Coordinators, Regions I-X

**GUIDANCE ON COORDINATION OF FEDERAL FACILITY ENFORCEMENT ACTIONS  
WITH THE OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE**

**I. APPLICATION**

This guidance applies to civil enforcement actions against departments, agencies, and instrumentalities of the United States which arise at federal facilities under any federal environmental laws. This guidance also addresses civil enforcement actions under any federal environmental law against contractor-operators of federal facilities.

This guidance covers actions taken to address violations of environmental laws as well as actions taken to address violations of interagency agreements under Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9620, and federal facility compliance agreements or administrative compliance or consent orders under any other statute. This guidance does not apply to criminal enforcement actions.

**II. COORDINATION WITH THE OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE**

The potential national significance of many enforcement actions against agencies or departments of the Federal Government or against contractors who operate federal facilities makes it vital that the Office of Enforcement and Compliance Assurance be informed before important actions are initiated or before stipulated penalties under enforcement agreements are formally assessed.

This guidance will help ensure consistency in the Agency's actions against federal facilities and afford Headquarters an opportunity to prepare to address the questions that are inevitably posed to the Office of Enforcement and Compliance Assurance by the leadership of the affected federal agencies and the press concerning EPA's action. It will also allow senior Agency management the opportunity, in appropriate circumstances, to directly notify the senior management of the affected federal agency of the violations to ensure that the underlying environmental problems are addressed promptly. The Director, Federal Facilities Enforcement Office, should make the Region aware of discussions senior Agency management have with senior management of the affected federal agency.

~~Written notice describing the action contemplated should be given to the Director, Federal~~  
Facilities Enforcement Office, as early as possible before important actions are taken or announced against either federal agencies or their contractor-operators. This notice need not be lengthy and might only contain a description of the action to be taken, the date the action will be taken, any information relating to press releases on the matter, and the name of a Regional point of contact. Often, a copy of the unsigned action letter that the Region is preparing to send to the affected federal agency is enough to satisfy Headquarters concerns. A copy of the Regional Counsels Weekly Update telecopied directly to the Director, Federal Facilities Enforcement

Office prior to the enforcement action with a notation in the facsimile cover page alerting FFEO to the notice may also suffice.

For example, notice should be given of large penalty actions, potentially precedent setting actions, or actions that, because of unique circumstances, can reasonably be expected to create significant interest outside EPA. The Regions should also give notice to FFEO of any other action which, in the judgement of the Region, can be expected to have national implications.

This guidance will facilitate consistency and communication regarding environmental problems at Federal facilities, and will assist in coordinating the Agency's enforcement activity. ~~This guidance is not intended to discourage Regions from using their enforcement authority at federal facilities nor does it affect EPA's enforcement authority or change existing obligations of that authority in any way. It does not impose a requirement that Regions seek Office of Enforcement and Compliance Assurance approval for their enforcement actions.<sup>1</sup> It is the policy of EPA to use its enforcement authority aggressively to ensure that federal Agencies and their contractors comply with all environmental laws.~~

### III. NOTICE

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. Such guidance and procedures do not constitute rule making by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance and its internal implementing procedures.

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For guidance on determining FFEO's role in Federal Facility enforcement cases, see the November 9, 1994 memorandum "OECA Regional Procedures for Civil Judicial and Administrative Enforcement Case Redefinition," signed by Robert Van Heuvelen.



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

NOV 9 1994

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: OECA/Regional Procedures for Civil Judicial and  
Administrative Enforcement Case Redelegation

FROM: *Robert I. Van Heuvelen*  
Robert I. Van Heuvelen, Director  
Office of Regulatory Enforcement

TO: Deputy Regional Administrators, Regions I - X  
Regional Counsel, Regions I - X  
Regional Program Division Directors, Regions I - X

I. INTRODUCTION

Attached for your reference and use are the procedures for implementing Steven Herman's July 11, 1994 memorandum on "Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases" ("Redelegations Memorandum"). The attached materials also include media-specific examples of nationally significant enforcement issues, a key concept in the redelegations. We expect that the redelegations will result in a substantial net reduction of single Region cases in which OECA's Office of Regulatory Enforcement (ORE) will be significantly involved, including a substantial decrease in the number of settlements requiring OECA/ORE concurrence. As a result, we will be able to focus our involvement on a far smaller number of truly nationally significant cases.

The attached materials result from extensive discussions among the various ORE Divisions and regional program divisions and counsel offices. We would like to take this opportunity to thank all of the regional personnel who worked so cooperatively with us over the last two months to develop both the general cross-program procedures and the media-specific lists and criteria for defining nationally significant issues and cases. We expect these procedures to evolve based on our mutual experience with them, and plan to regularly re-examine and revise them as necessary.

Our intent through these procedures is to lay out a consistent process for identifying to OECA those regionally-initiated judicial and administrative cases that

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present issues of national significance. Specifically, the procedures require regional staff to work with the ORE Divisions and reach agreement on the appropriate level and extent of ORE/OECA's formal role in enforcement case management. In developing these procedures, we have been guided by the following principles set out in the Redelegations Memorandum:

- (1) that OECA will focus its efforts and resources on those cases where OECA can add value,
- (2) that OECA's involvement will be reserved for cases and issues of national significance;
- (3) that for judicial and administrative cases that seek a bottom line penalty of less than \$500,000, the Regional Counsel will be delegated the Assistant Administrator's authority to concur on settlements undertaken by the Regional Administrator (or the Regional Division Director, where the Regional Administrator's authority has been redelegated), provided that the settlements adhere to national policy and do not otherwise raise issues of national significance;
- (4) that OECA will be flexible in determining the appropriate level of involvement (e.g., ORE has the flexibility to opt out of a case with a bottom line penalty greater than or equal to \$500,000 where there are no issues of national significance and the case is not likely to assume a national profile); and
- (5) that OECA will be conducting systematic oversight of the Regions through Regional evaluations rather than focusing exclusively on a case-by-case "real time" review approach to determine the extent to which Regions are complying with national policy and the requirements of the redelegations.

Finally, in keeping with the spirit of the redelegations, we want to ensure that ORE's involvement in specific cases makes sense, and that we facilitate effective and efficient resolution of any issues. Regional comments have greatly assisted in designing a cross-program process which provides an opportunity for ORE involvement where appropriate. We appreciate the significant input received from you and your staff, and hope that this constructive dialogue will continue.

## II. SUMMARY CHART

The first attachment ("Attachment A") is a chart that summarizes the general ORE/Regional procedures for determining ORE's formal involvement in individual Region cases. The chart provides a quick overview of the general cross-program

procedures, but necessarily leaves out many important details. Accordingly, Attachment B (below) must be consulted to ensure satisfaction of all requirements.

### III. GENERAL PROCEDURES

The next attachment ("Attachment B"), entitled "Outline of General Procedures for Regional Enforcement Case Delegation," contains a full description of the general ORE/Regional procedures for determining ORE's formal involvement in Regional civil judicial and administrative enforcement cases. These procedures were thoroughly vetted in an ORE/Regional workgroup that included representatives from all ten Regions, from both the Office of Regional Counsel and from various program divisions.<sup>1</sup> In accordance with Steve Herman's Redelegations Memorandum, the procedures emphasize trust, common sense and streamlining, while at the same time ensuring that decisions regarding ORE's case involvement are adequately documented.

For example, in judicial cases Regions will use an already-existing section in the referral's litigation report to both document and notify ORE of nationally significant issues in the cases. For administrative cases, a simple one-page form will serve as documentation and notice. (For federal facilities cases, Regions should forward the one-page form to the Director of OECA's Federal Facilities Enforcement Office.) Moreover, for judicial and administrative cases with bottom line penalties below \$500,000, ORE will require notice only if the cases present nationally significant issues. Of course, because ORE will not otherwise receive formal notice regarding these cases, the Office of Regional Counsel (ORC) must provide adequate advance notice of subsequent significant developments in the litigation (e.g., trial or settlement) and of significant press or other public attention.

Regarding administrative cases with nationally significant issues, the procedures offer some flexibility regarding the timing of coordination with ORE by requiring Regions to notify ORE of such issues before filing the administrative complaint if at all possible, but no later than concurrent with filing. Again, this accords with the Redelegations Memorandum's emphasis on early warning, trust and common sense: we expect that in most situations pre-filing notice will be achievable, but where not,

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<sup>1</sup> With regard to the procedures, I want to thank Tom Olivier of Region I, Wilkie Sawyer of Region II, John Ruggero and Mary Coe of Region III, Nancy Tommelleo and Truly Bracken of Region IV, Joe Boyle of Region V, Pam Phillips of Region VI, Chuck Figur from Region VIII, Ann Nutt of Region IX and Meg Silver of Region X. These Regional representatives were critical in developing a workable process for implementing the redelegations.

concurrent notice will be sufficient. (There may be very rare occasions where even concurrent notice is not achievable; in such circumstances, notice as close as possible to concurrent with filing will be adequate.)

In almost all circumstances, the five ORE Divisions will use these general cross-program procedures in order to simplify implementation as much as possible. In a few narrow circumstances, media-specific procedures have been established (see Attachment C below). These variations are noted in the attached media-specific guidances, which also identify appropriate individuals to contact within each Division.

Moreover, to further streamline these procedures, the Air Enforcement Division is experimenting with "categoric opt outs" for certain classes of long-established, familiar cases such as Clean Air Act Asbestos NESHAP demolition/renovation actions. These cases will be presumed not to be nationally significant even if their bottom line penalties are above \$500,000. Accordingly, Regions will not be required to seek ORE concurrence unless the cases present some other, separate nationally significant issue. (This approach is described in detail in the cross-program procedures.) As with other cases for which OECA is receiving no formal notice, ORC must provide adequate advance notice through other avenues of communication, including the weekly Regional Counsel reports to the Assistant Administrator, of major litigation milestones (e.g., settlement, trial) and of significant press or other public attention. Based on our experience with these categoric opt outs, we may expand them to cover other selected categories of cases in Air or other media.

#### IV. MEDIA-SPECIFIC GUIDANCE AND NATIONALLY SIGNIFICANT ISSUES LISTS

Also attached are memoranda from each of ORE's Divisions that outline media-specific contacts and procedures where appropriate, as well as media-specific examples of nationally significant issues ("Attachment C"). Please note that the Redelegations Memorandum itself contains an attachment with general guidelines for identifying nationally significant issues ("Attachment D"). The media-specific examples are intended to be used together with the general guidelines; some of the lists of examples include a listing of the general guidelines for convenience. The media-specific examples will be updated periodically to remove or add issues as appropriate.

#### V. MULTI-MEDIA CASES

In the interests of streamlining, OECA is seeking to establish a system whereby, absent extenuating circumstances, Regions would need to coordinate with a single office or division that would serve as the lead on a particular case. For cases

brought under multiple statutes (except those brought against federal facilities), the Regions should contact ORE's Multi-Media Enforcement Division, which will coordinate with other OECA offices and divisions as appropriate.

#### VI. FEDERAL FACILITIES CASES

As listed in Attachment B to the Redelegations Memorandum, federal facilities matters raise indicia of national significance. OECA's contact in federal facilities cases is through the Federal Facilities Enforcement Office (FFEO) rather than the Office of Regulatory Enforcement. Otherwise, procedures in federal facilities cases match those in other nationally significant cases. Thus, Regional Counsels should consult with FFEO regarding federal facilities enforcement cases. Where the Region is assessing a bottom line penalty of less than \$500,000 the Director of FFEO or a Division Director level designee may opt in for purposes of concurrence. Where the bottom line penalty is \$500,000 or more, the Director of FFEO, at the Office Director level, may opt out of the case for purposes of concurrence. In federal facility cases that present issues of national significance in other program areas, FFEO will take the lead and will work with other OECA offices and divisions, as appropriate, to address the issues.

The above-described process does not alter the procedures in the "Guidance on Coordination of Federal Facility Enforcement Actions with the Office of Enforcement" dated October 20, 1992, which continue as before, and provide for notice to the Director of FFEO as early as possible before certain actions are taken or announced against either federal agencies or their contractor-operators.

#### VII. CURRENT ENFORCEMENT DOCKETS

Because the Redelegations Memorandum applies to all enforcement cases, the attached procedures and guidance apply to both pending and new cases as of November 1, 1994. Accordingly, for newly-initiated cases, we ask that you implement the procedures immediately. For all existing judicial and administrative cases, Regions should focus their initial efforts on evaluating cases with near-term, action-forcing events, such as hearings, trials, filing of dispositive pleadings or settlements, that will occur within the next 60 days. For other existing judicial cases, the ORE Divisions will be working with

the Regions to review the judicial dockets and identify those cases in which ORE will continue to be involved; this should be completed no later than January 3, 1995.<sup>2</sup>

With regard to all existing administrative cases that do not have near-term, action-forcing events, we ask that by January 3, 1995, the Regions evaluate each case, complete the "Standard Form to Specify Office of Regulatory Enforcement Involvement in Cases"<sup>3</sup>, and submit the completed form to the appropriate ORE Division if required by the cross-media procedures. Because ORE may receive a very large number of forms all at once, each of which will require discussions between ORE and Regional staff, we will process these forms within 30 days rather than 10 days (sooner if possible). Future administrative case forms will be processed within 10 days in accordance with the cross-program procedures.

In closing, we want to emphasize that each ORE Division will work closely with their colleagues in the Regions to help ensure that implementation of the attached procedures is as smooth as possible. We want to facilitate issuance of strong enforcement cases within each Region -- that's our bottom line. We intend to approach the implementation of the procedures in that spirit. Again, thank you for your assistance and we look forward to working with you on this.

#### Attachments

cc: Steven Herman  
Scott Fulton  
Michael Stahl  
OECA Office Directors  
John Cruden, DOJ  
Bruce Gelber, DOJ  
Joel Gross, DOJ

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<sup>2</sup> In some programs (e.g., Air and Water), much of the work to evaluate the existing judicial docket has already been done. For such programs, we anticipate that the reviews will be completed well before January 3, 1995.

<sup>3</sup> See the cross-program procedures (Attachment C) at page 8.

# Summary of EPA Enforcement Case Redelelegation Procedures

Types of Cases	Judicial Referral or Administrative Complaint Stage		Post-Filing Stages
	Nationally Significant Issues (NSIs)	No Nationally Significant Issues	
<b>Judicial Cases</b> \$500,000 and over	<ul style="list-style-type: none"> <li>When referral is made, Region will notify OECA of NSIs in referral's litigation report</li> <li>Separate section in lit report will identify, describe NSIs</li> <li>30 days for ORE review</li> <li>Appropriate ORE Division and Region will discuss, agree on ORE involvement</li> <li>Memo from ORE Division Director (DD) to Regional Counsel (RC) will memorialize agreement</li> <li>ORE DD can opt out of case entirely where appropriate</li> </ul>	<ul style="list-style-type: none"> <li>When referral is made, Region will notify OECA of no NSIs in referral's litigation report</li> <li>Separate section in lit report will state that there are no NSIs, and recommend that OECA opt out</li> <li>30 days for ORE review</li> <li>If ORE agrees that there are no NSIs, ORE will opt out; if NSIs, ORE and Region will discuss, agree on ORE involvement</li> <li>Memo from ORE DD to RC will memorialize agreement</li> </ul>	<ul style="list-style-type: none"> <li>Region will notify OECA of new NSIs as soon as Region identifies them</li> <li>Informal notice (e.g., phone calls)</li> <li>Expedited ORE review, with first priority on response to NSI rather than on memorializing agreement</li> <li>ORE and Region will discuss, agree on ORE involvement</li> <li>Memo from ORE DD to RC will memorialize agreement, generally within 30 days</li> <li>ORE DD can decide where appropriate that ORE will have no involvement</li> </ul>
<b>Admin Cases</b> \$500,000 and over	<ul style="list-style-type: none"> <li>Preferably before filing administrative complaint, but no later than concurrent with filing, Region will notify OECA of NSI</li> <li>One page form signed by RC or designee, identifying NSI and proposing level of ORE involvement in case</li> <li>10 days for ORE review</li> <li>ORE and Region will discuss, agree on ORE involvement</li> <li>ORE DD or designee will counteroffer and return form with any agreed-upon amendments; form will be kept in Regional files</li> <li>ORE DD can opt out of case entirely where appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Preferably before filing administrative complaint, but no later than concurrent with filing, Region will notify OECA that there are no NSIs</li> <li>One page form signed by RC, stating that there are no NSIs in case and recommending that ORE opt out</li> <li>10 days for ORE review</li> <li>If ORE agrees that there are no NSIs, ORE will opt out; if NSIs, ORE and Region will discuss, agree on ORE involvement</li> <li>ORE DD will counteroffer and return form with any agreed-upon amendments; form will be kept in Regional files</li> </ul>	<ul style="list-style-type: none"> <li>Region will notify OECA of new NSIs as soon as Region identifies them</li> <li>One page form signed by RC or designee, identifying NSI and proposing level of ORE involvement in case</li> <li>10 days for ORE review</li> <li>ORE and Region will discuss, agree on ORE involvement</li> <li>ORE DD or designee will counteroffer and return form with any agreed-upon amendments; form will be kept in Regional files</li> <li>ORE DD can decide where appropriate that ORE will have no involvement</li> </ul>
<b>Judicial Cases</b> under \$500,000	<ul style="list-style-type: none"> <li>When referral is made, Region will notify OECA of NSIs in referral's litigation report; Region will send OECA the lit report only if the case contains NSIs</li> <li>Separate section in lit report will identify, describe NSIs</li> <li>30 days for ORE review</li> <li>ORE and Region will discuss, agree on ORE involvement</li> <li>Memo from ORE DD to RC will memorialize agreement</li> <li>ORE DD can opt out of case entirely where appropriate</li> </ul>	<ul style="list-style-type: none"> <li>When referral is made, Region will make and document its determination that there are no NSIs in the case, but no requirement to inform OECA by providing lit report</li> <li>Separate section in lit report will state that there are no NSIs in case</li> <li>Because OECA is receiving no formal notice of these cases, Regions must provide adequate advance notice through other avenues of communication, such as weekly RC reports, if cases are likely to attract significant press or other public attention</li> <li>ORE Divisions will review determinations during Regional audits</li> </ul>	<ul style="list-style-type: none"> <li>Region will notify OECA of new NSIs as soon as Region identifies them</li> <li>Informal notice (e.g., phone calls)</li> <li>Expedited ORE review, with first priority on response to NSI rather than on memorializing agreement</li> <li>ORE and Region will discuss, agree on ORE involvement</li> <li>Memo from ORE DD or designee to RC will memorialize agreement, generally within 30 days</li> <li>ORE DD can decide where appropriate that ORE will have no involvement</li> </ul>
<b>Admin Cases</b> under \$500,000	<ul style="list-style-type: none"> <li>Same procedures as for administrative cases of \$500,000 or over</li> </ul>	<ul style="list-style-type: none"> <li>Preferably before filing admin complaint, but no later than concurrent with filing, Region will make/document determination of no NSIs, but no requirement to notify OECA by providing one page form</li> <li>One page form signed by RC or designee, stating no NSIs in case; form will be kept in Regional files</li> <li>ORE Divisions will review determinations during Regional audits</li> </ul>	<ul style="list-style-type: none"> <li>Same as for administrative cases of \$500,000 or over, except that ORE DD or designee can decide where appropriate that ORE will have no involvement</li> </ul>

**OUTLINE OF GENERAL PROCEDURES FOR  
REGIONAL ENFORCEMENT CASE REDELEGATION**

November 1, 1994

**I. JUDICIAL CASES W/ BOTTOM LINE PENALTY OF \$500,000 OR OVER**

**A. Referral Stage**

**1. Region identifies case with nationally significant issues.<sup>1</sup>**

**Timing:** At same time Region sends referral (i.e., a direct/indirect referral, pre-referral negotiation package, or consent decree enforcement package) to Department of Justice (DOJ), Region will send referral to Office of Enforcement and Compliance Assurance (OECA) as notification of nationally significant issues in case.

**Method:** Office of Regional Counsel (ORC) will describe and discuss nationally significant issues in referral's litigation report, in a separate section that already exists for this purpose. Region will provide OECA will full referral package, including attachments.

**Decision on Extent of Involvement:** Appropriate Office of Regulatory Enforcement (ORE) Division within OECA will have 30 days after receipt of notice for ORE review. Within this timeframe, ORE staff or branch chiefs, as appropriate, will discuss case with Regional counterparts and seek agreement on the extent and duration of OECA involvement, e.g., concurrence or consultation, to be followed by letter from ORE Division Director to Regional Counsel (RC) memorializing agreement.<sup>2</sup> ORE Division Director can also opt out of case entirely where appropriate. If Division Director and RC cannot agree, elevation to ORE Office Director.

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<sup>1</sup> "Case with nationally significant issues" includes all nationally significant cases or issues as defined in the guidelines attached to Steve Herman's July 11, 1994 Redelegations Memorandum and in the various media-specific issues lists prepared by the Office of Regulatory Enforcement.

<sup>2</sup> "OECA involvement" refers only to OECA's formal role in enforcement case management, not to informal ORE/Regional communications or activities of other OECA offices (e.g., Office of Compliance).

**2. No nationally significant issues.**

**Timing:** At same time Region sends referral to DOJ, Region sends referral to OECA as notification that there are no nationally significant issues in case.

**Method:** In already-existing section of litigation report, ORC will state that there are no nationally significant issues in case, and recommend that OECA opt out. Regions will provide OECA with data sheet and litigation report, but no referral attachments. OECA will request attachments as necessary.

**Review of determination:** Appropriate ORE Division will have 30 days after receipt of notice to review the ORC recommendation and decide whether OECA will opt out. If ORE agrees, the ORE Division Director will inform the RC via a form letter and opt out of the case.<sup>3</sup> If ORE identifies nationally significant issues, the ORE staff or branch chiefs, as appropriate, will discuss them with Regional counterparts and seek agreement on the extent and duration of OECA involvement, to be followed by letter from the ORE Division Director to RC memorializing agreement. If Division Director and RC cannot agree, elevation to ORE Office Director.

**3. No nationally significant issue, and a categoric opt out case (for example, Clean Air Act Asbestos NESHAP demolition/renovation cases).**

**Timing:** At same time Region sends referral to DOJ, Region will make and document determination that the case contains no nationally significant issues and that it falls within a pre-approved category of opt outs, but no requirement to send referral to OECA as notification.

**Method:** In already-existing section of litigation report, ORC will make and document determination that the case contains no nationally significant issues and that it falls within a pre-approved category of opt outs. Regions not required to provide litigation report or other portions of referral. Because OECA is receiving no formal notice of these cases, ORC must provide adequate advance notice

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<sup>3</sup> Since after this point ORE will no longer be formally involved in the case unless a nationally significant issue arises later in the proceedings, ORC will need to provide OECA with as early notice as possible regarding subsequent significant developments in the litigation (e.g., trial or settlement) and significant press or other public attention. This applies to all instances where ORE opts out of a case.

through other avenues of communication, including the weekly RC reports to the Assistant Administrator, of major litigation milestones (e.g., settlement, trial) and significant press or other public attention.

**Review of Determination:** ORE will review categoric opt out determinations during Regional audits.

**B. Post-Referral Stages (in cases where OECA originally opted out)**

**Note:** The redelegation itself states that the Regional Counsel are responsible for identifying nationally significant issues "as they arise", and for informing OECA "as soon as they are identified." Accordingly, even where OECA has originally opted out of a case, there is a continuing obligation for the RCs to inform OECA of any nationally significant issues that emerge during the course of litigation. This approach accords with the Redelegations Memorandum's overall insistence on flexibility and common sense.

**Timing:** As soon as issues identified.

**Method:** As informally as possible, with emphasis on trust, common sense, and providing the earliest possible warning of new issues, rather than on written notice. For example, a phonecall from ORC to ORE branch chief could serve as notice.

**Decision on Extent of Involvement:** ORE staff or branch chiefs, as appropriate, will discuss case with Regional counterparts and seek agreement on the extent and duration of OECA involvement, e.g., concurrence or consultation. Agreement will be memorialized by letter from ORE Division Director to RC as soon as possible, generally within 30 days after notice; however, first priority will be quick response to new substantive issue. ORE Division Director can also decide where appropriate that ORE will have no involvement. If Division Director and RC cannot agree on approach, elevation to ORE Office Director.

**II. ADMINISTRATIVE CASES WITH PROPOSED OR BOTTOM LINE PENALTY OF \$500,000 OR OVER<sup>4</sup>**

Note: Only Toxics and RCRA cases presently fall into this category.

**A. Filing Stage**

**1. Region identifies nationally significant issues.**

**Timing:** As soon as Region becomes aware of issue. The preference is that the issue be raised prior to filing the complaint, but no later than concurrent with filing.<sup>5</sup>

**Method:** One page form signed by the Regional Counsel or designee identifying issues and proposing level of ORE involvement, sent to appropriate ORE Division. Region will also provide proposed or filed complaint, decision memo and/or other existing information to parallel information provided in judicial referral.

**Decision on Extent of Involvement:** Within 10 days of receipt of notice, ORE staff or branch chiefs, as appropriate, will discuss case with Regional counterparts and seek agreement on the extent and duration of OECA involvement, e.g., concurrence or consultation, to be followed by ORE Division Director or designee, as appropriate, countersigning and returning one page form rather than sending separate letter. (If after discussions ORE decides to opt out, the ORE Division Director must countersign.) Note that the administrative complaint can be filed before ORE countersigns form. Countersigned form will be kept in Regional files. Disputes would be elevated to ORE Office Director.

**2. No Nationally Significant Issues**

**Timing:** Same timing as above. Region will notify ORE that no such issues appear in case.

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<sup>4</sup> If the Region has proposed a penalty in the administrative complaint without calculating a separate bottom line penalty, the proposed penalty should be used. If a separate bottom line penalty has been calculated, it should be used instead. See Redelegations Memorandum, p.3.

<sup>5</sup> For a few small classes of RCRA cases specified in the RCRA redelegations approach, ORE involvement must occur before filing to comport with existing RCRA delegations or guidance.

**Method:** Same form as above, but will state that there are no nationally significant issues and recommend that ORE opt out of the case. Regional Counsel, not designee, must sign form because ORC is recommending that ORE opt out.

**Decision on Extent of Involvement:** Same as above, except that ORE Division Director, not designee, must countersign form if ORE opts out. This parallels the procedure for opting out in judicial cases over \$500,000 (I.A.2. above.)

**B. Post-Filing Stages (in cases where OECA originally opted out)**

**Timing:** As soon as issues identified.

**Method:** One page form signed by the Regional Counsel or designee, sent to appropriate ORE Division. (Note that using this form, the same as for other stages of the administrative program, will eliminate the need for a separate return letter from ORE to ORC.)

**Decision on Extent of Involvement:** Within 10 days of receipt of notice, ORE staff or branch chiefs, as appropriate, will discuss case with Regional counterparts and seek agreement on the extent and duration of OECA involvement, e.g., concurrence or consultation, to be followed by ORE Division Director or designee, as appropriate, countersigning and returning one page form. (If ORE decides to have no involvement, the ORE Division Director must countersign.) Countersigned form will be kept in Regional files. Disputes would be elevated to ORE Office Director.

**III. JUDICIAL CASES WITH BOTTOM LINE PENALTY UNDER \$500,000**

**Note:** Both the Redelegations Memorandum and the redelegation itself make clear that it is the Regional Counsel's responsibility to identify nationally significant issues in all single Region judicial and administrative enforcement cases below \$500,000. "The Regional Counsel will, in the first instance and in keeping with this guidance, make and document the determination whether such a matter raises an issue of national significance." Redelegations Memorandum, p.3. "The Regional Counsel are responsible in the first instance for identifying such cases and/or issues as they arise ...." Redlegation, p.2.

The proposed implementation plan for these cases (described in detail below) would require ORC to formally notify ORE only if the case contained a nationally significant issue. For a case with no such issues, RC would still need to make,

document and file its determination, but would not have to notify ORE of the case. ORE and the Regions would continue to develop informal avenues of communication.

**A. Referral Stage**

**1. Region identifies nationally significant issues.**

**Timing:** At same time Region sends referral to DOJ, Region will send referral to OECA as notification, but only if there are nationally significant issues in the case.

**Method:** Office of Regional Counsel (ORC) will describe and discuss nationally significant issues in referral's litigation report, in a separate section that already exists for this purpose. Region will provide OECA will full referral package, including attachments.

**Decision on Extent of Involvement:** Same as for judicial cases over \$500,000. Within 30 days of receipt of notice, ORE staff or branch chiefs, as appropriate, will discuss case with Regional counterparts and seek agreement on the extent and duration of OECA involvement, e.g., concurrence or consultation, to be followed by letter from ORE Division Director to RC memorializing agreement. ORE Division Director can also opt out of case entirely where appropriate. If Division Director and RC cannot agree, elevation to ORE Office Director.

**2. No nationally significant issues.**

**Timing:** At same time Region sends referral to DOJ, Region will make and document determination that the case contains no nationally significant issues, but no requirement to send referral to OECA as notification.

**Method:** In already-existing section of litigation report, ORC will make and document determination that the case contains no nationally significant issues. Region not required to provide litigation report or other portions of referral. Because OECA is receiving no formal notice of these cases, ORC must provide adequate advance notice through other avenues of communication, including the weekly RC reports to the Assistant Administrator, of major litigation milestones (e.g., settlement, trial) and significant press or other public attention.

**Review of determination:** ORE Divisions will review determinations during Regional audits.

**B. Post-Filing Stages (cases w/ no prior OECA involvement)**

Timing, method and decision on extent of involvement will be same as for judicial cases above \$500,000 (I.B. above), except that letters memorializing agreements could be from ORE to ORC Branch Chief rather than from ORE Division Director to RC: ORE DD must still sign letter if ORE decides to have no involvement in case.

**V. ADMINISTRATIVE CASES WITH PROPOSED OR BOTTOM LINE PENALTY OF UNDER \$500,000**

**A. Filing Stage**

**1. Region identifies nationally significant issues.**

Timing, method and decision on extent of involvement same as for administrative cases over \$500,000 (II.A.1. above).

**2. No nationally significant issues.**

Timing: In same timeframe as for administrative cases over \$500,000, ORC will use one page form to make and document determination that there are no such issues in case, but no requirement to provide OECA with form as notification.

Method: Same one page form as above, but will state that there are no nationally significant issues. Regional Counsel or designee will sign form, which will be kept in Regional files. Because OECA is receiving no formal notice of these cases, ORC must provide adequate advance notice through other avenues of communication, including the weekly RC reports to the Assistant Administrator, of major litigation milestones (e.g., settlement, trial) and significant press or other public attention.

Review of Determination. ORE Divisions will review determinations during Regional audits.

**B. Post-Filing Stages (cases w/ no prior OECA involvement)**

Timing, method, and decision on extent of involvement could be same as for administrative cases over \$500,000 (II.B. above), except that ORE DD or designee can countersign form if ORE decides to have no involvement.

\*\*\* PRIVILEGED/CONFIDENTIAL/DO NOT RELEASE UNDER FOIA \*\*\*

**Standard Form to Specify Office of Regulatory Enforcement  
Involvement in Cases**

Case name: \_\_\_\_\_

Location of facility: City \_\_\_\_\_, State \_\_\_\_\_, Region \_\_\_\_\_

Forum (check one):

ALJ (or other presiding officer) \_\_\_\_\_ EAB \_\_\_\_\_  
District or Circuit Court \_\_\_\_\_ (specify District/Circuit: \_\_\_\_\_)

Status of case (check all that apply):

Prefiling, in development _____	Dispositive pleadings imminent _____
Filed and pending _____	Trial or hearing imminent _____
Filed and stayed _____	Settlement negotiations ongoing _____
Filed and active _____	

Primary Violations (narrative or listing of sections):

Nationally significant issue(s):

Regional legal and program staff contacts (names, phone numbers, FAX numbers):

Nature of Office of Regulatory Enforcement involvement/assistance proposed by Region:

Signature: \_\_\_\_\_  
Appropriate Regional Manager

\_\_\_\_\_  
Date Signed

Concur: \_\_\_\_\_  
Appropriate ORE Manager

\_\_\_\_\_  
Date Signed



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

OCT 20 1992

OFFICE OF ENFORCEMENT

**MEMORANDUM**

**SUBJECT:** Guidance on Coordination of Federal Facility  
Enforcement Actions with the Office of Enforcement

**FROM:** Thomas L. McCall, Jr. *TL McCall*  
Acting Deputy Assistant Administrator for Federal  
Facilities Enforcement

**TO:** Waste Division Directors, Regions I-X  
Water Division Directors, Regions I-X  
Air Division Directors, Regions I-X  
Regional Counsels, Regions I-X

Please find attached the final version of the guidance on coordination of Federal facility enforcement actions with the Office of Enforcement. As you know, the main purpose of coordination guidance is to afford Headquarters an opportunity to prepare to respond to questions from the leadership of the affected Federal agencies and the press regarding EPA's enforcement actions. This guidance will also help to improve coordination between the Regions and the Office of Federal Facilities Enforcement (OFFE).

I would like to thank the Regions for their participation and cooperation in the development of this guidance. Any questions that you have regarding the implementation of this guidance may be directed to Gordon M. Davidson, Director, Office of Federal Federal Facilities Enforcement at (202)260-9801 or your staff may contact David Abdalla at (202)260-0413.

Enclosure

cc: Federal Facility Coordinators, Regions I-X

**GUIDANCE ON COORDINATION OF FEDERAL FACILITY ENFORCEMENT ACTIONS**  
**WITH THE OFFICE OF ENFORCEMENT**

**I. APPLICATION**

This guidance applies to civil enforcement actions against departments, agencies, and instrumentalities of the United States which arise at federal facilities under any federal environmental laws. This guidance also addresses civil enforcement actions under any federal environmental law against contractor-operators of federal facilities.

This guidance covers actions taken to address violations of environmental laws as well as actions taken to address violations of interagency agreements under Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9620, and federal facility compliance agreements or administrative compliance or consent orders under any other statute. This guidance does not apply to criminal enforcement actions.

**II. COORDINATION WITH THE OFFICE OF ENFORCEMENT**

The potential national significance of many enforcement actions against agencies or departments of the Federal Government or against contractors who operate federal facilities makes it vital that the Office of Enforcement be informed before important actions are initiated or before stipulated penalties under enforcement agreements are formally assessed.

This guidance will help ensure consistency in the Agency's actions against federal facilities and afford Headquarters an opportunity to prepare to address the questions that are inevitably posed to the Office of Enforcement by the leadership of the affected federal agencies and the press concerning EPA's action. It will also allow senior Agency management the opportunity, in appropriate circumstances, to directly notify the senior management of the affected federal agency of the violations to ensure that the underlying environmental problems are addressed promptly. The Director, Office of Federal Facilities Enforcement, should make the Region aware of discussions senior Agency management have with senior management of the affected federal agency.

Written notice describing the action contemplated should be given to the Director, Office of Federal Facilities Enforcement, as early as possible before important actions are taken or announced against either federal agencies or their contractor-operators. This notice need not be lengthy and might only

contain a description of the action to be taken, the date the action will be taken, any information relating to press releases on the matter, and the name of a Regional point of contact. Often, a copy of the unsigned action letter that the Region is preparing to send to the affected federal agency is enough to satisfy Headquarters concerns. A copy of the Regional Counsel's Weekly Update telecopied directly to the Director, Office of Federal Facilities Enforcement prior to the enforcement action with a notation on the facsimile cover page alerting OFFE to the notice may also suffice.

For example, notice should be given of large penalty actions, potentially precedent setting actions, or actions that, because of unique circumstances, can reasonably be expected to create significant interest outside EPA. The Regions should also give notice to OFFE of any other action which, in the judgement of the Region, can be expected to have national implications.

This guidance will facilitate consistency and communication regarding environmental problems at federal facilities, and will assist in coordinating the Agency's enforcement activity. This guidance is not intended to discourage Regions from using their enforcement authority at federal facilities nor does it affect EPA's enforcement authority or change existing delegations of that authority in any way. It does not impose a requirement that Regions seek Office of Enforcement approval for their enforcement actions. It is the policy of EPA to use its enforcement authority aggressively to ensure that federal agencies and their contractors comply with all environmental laws.

### III. NOTICE

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. Such guidance and procedures do not constitute rule making by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance and its internal implementing procedures.



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

JUL 24 1991

THE ADMINISTRATOR

MEMORANDUM

**SUBJECT:** Enforcement Actions at Federal Facilities

**TO:** Regional Administrators  
Regions I-X

As you know, I believe that Federal facilities' compliance with environmental laws is a high priority. Where events of noncompliance are observed, enforcement follow-up is often necessary. However, the national significance of enforcement actions against agencies or departments of the Federal Government or against contractors who operate Federal facilities makes it vital that the Office of Enforcement be informed before such actions are initiated or penalties are formally assessed.

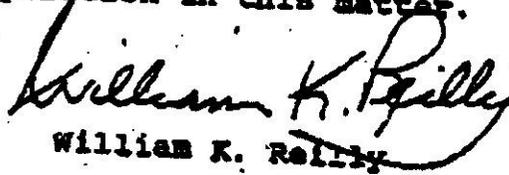
To ensure consistency in the Agency's actions against Federal facilities, I ask that you have your staffs inform the Office of Enforcement, Deputy Assistant Administrator for Federal Facilities Enforcement, before such actions are initiated or penalties are assessed. This notice will allow us to ensure that senior management of the affected agency or department has notice and is able to assure that environmental problems at the site are corrected as quickly as possible. It will also enable us to prepare to address the questions that are inevitably posed to the Office of Enforcement and to me by the leadership of the affected Federal agencies and the press concerning EPA's action. Further, I have asked the Office of Enforcement to develop guidance that would address this notice requirement and provide for consistent application of the model CERCLA stipulated penalty language.

This notice requirement and guidance are not intended to discourage Regions from using their enforcement authority at Federal facilities nor will they impact EPA's enforcement

- 2 -

authority in any way. Rather, they will facilitate consistency and communication regarding environmental problems at Federal facilities, and will assist in coordinating the Agency's enforcement follow-up.

Thank you for your cooperation in this matter.

  
William K. Reilly

cc: Deputy Administrator  
Assistant Administrator for Enforcement  
Associate Administrator for Regional Operations and  
State/Local Relations  
Associate Administrator for Communications and Public  
Affairs



**U.S. Environmental Protection Agency**

**Regional Liaisons in OECA's Federal Facility Enforcement Office**

<b>Region 1 – BILL FRANK</b>	<b>202 564-2584</b>
<b>Region 2 – GRACIE GARCIA</b>	<b>202 564-2588</b>
<b>Region 3 – SALLY DALZELL</b>	<b>202 564-2583</b>
<b>Region 4 – JOYCE OLIN</b>	<b>202 564-2772</b>
<b>Region 5 – LANCE ELSON</b>	<b>202 564-2577</b>
<b>Region 6 – AMIR INGRAM</b>	<b>202 564-0150</b>
<b>Region 7 – DAVID LEVENSTEIN</b>	<b>202 564-2591</b>
<b>Region 8 – DAN DRAZAN</b>	<b>202 564-2328</b>
<b>Region 9 – MARIE MULLER</b>	<b>202 564-0217</b>
<b>Region 10 – MELANIE GARVEY</b>	<b>202 564-2579</b>