



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C 20460


JUN 21 1989

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Revised EPA Guidance for Parallel Proceedings

FROM: Edward E. Reich 
Acting Assistant Administrator

TO: Assistant Administrators
Associate Administrators
Headquarters Enforcement Program Office Directors
Regional Administrators, I-X
Deputy Regional Administrators, I-X
Regional Counsel, I-X

Attached for your use and distribution is the revised guidance on parallel proceedings. Copies of the "Guidelines on Investigative Procedures for Parallel Proceedings" should be made available at once to all affected enforcement personnel, program managers, and senior staff. Also included in the Guidelines is a short form, two-page "Easy Access to Parallel Proceedings Guidance by Five Rules of Thumb" which you may wish to post prominently in all civil enforcement offices.

Effective immediately, these Guidelines constitute Agency policy with respect to parallel proceedings. These Guidelines, taken together with the June 15, 1989 memorandum, "Procedures for Requesting and Obtaining Approval of Parallel Proceedings", (attached) supersede and replace the following five memoranda dealing with parallel proceedings:

--"Policies and Procedures on Parallel Proceedings at the Environmental Protection Agency," dated January 23, 1984;

--"The Use of Administrative Discovery Devices in the Development of Cases Assigned to the Office of Criminal Investigations," February 16, 1984;

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March 12, 1985;

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--"Handling Requests for Parallel Proceedings," April 2,
1987.

This final guidance reflects all of the comments received upon the several prior drafts circulated over the past several months. These Agency Guidelines also reflect the comments of the Department of Justice and correlate with their October 13, 1987, "Guidelines for Civil and Criminal Parallel Proceedings." Your comments were very helpful, and we appreciated your assistance in making the guidance useful as a field reference tool.

G U I D E L I N E S
O N
INVESTIGATIVE PROCEDURES FOR PARALLEL PROCEEDINGS

Issued by
Office of Enforcement and Compliance Monitoring
United States Environmental Protection Agency

Prepared by:

Paul R. Thomson, Jr.
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for Parallel Proceedings

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- INTRODUCTION -

The EPA objective to protect human health and the environment from undue risk and harm is given teeth through enforcement actions. The goals of enforcement are to assure that actual violations of the statutes and environmental regulations are detected and corrected, to punish the most serious violators as mandated by statute, and to deter future violations. Enforcement is accomplished by EPA administrative proceedings, by civil litigation in the Federal District Court, by Federal criminal cases, or by a combination of those enforcement actions. Use of the broad discretion conferred by Congress on the Agency in selection of enforcement alternatives enables EPA to achieve the most effective correction, punishment and deterrence of environmental violations. EPA exercises this discretion to choose use of administrative, civil judicial and/or criminal enforcement approaches sequentially or in combination simultaneously.

At some stage in the investigation process, EPA legal, program, and enforcement personnel decide whether a confirmed factual situation of non-compliance warrants EPA administrative enforcement proceedings or whether the Department of Justice should be involved for civil or criminal action in the Federal courts. Use of criminal proceedings simultaneously with that of Agency administrative or civil judicial proceedings is called a "parallel proceeding."

Agency policy does not favor parallel proceedings because meeting the legal requirements of the different investigative and trial procedures can present both legal and management problems which could jeopardize chances for success in either enforcement action. Limited enforcement resources dictate that dual proceedings occur only when a single approach will not achieve all the Agency's goals. To assist EPA managers in determining when to seek approval of parallel proceedings, this guidance document discusses their legal and managerial requirements.

A Capsule Overview:

What is the parallel proceeding? The simultaneous pursuit of criminal prosecution and civil judicial or agency administrative enforcement actions against the same parties for the same violation based upon the same statute. Generally, "same parties" will be interpreted in a common sense fashion; in an abundance of caution, any question concerning application of these categories to parallel proceedings should be addressed to Headquarters Office of Criminal Enforcement Counsel to ensure national consistency in their application among the Regions. (For example, situations involving a closely held corporation as an enforcement target when the sole stockholder is a criminal target.)

Why should EPA have parallel proceedings? To provide the widest possible range of effective and timely enforcement and protection remedies.

When is it appropriate to have parallel proceedings? Whenever risks to human health or imminent environmental hazards (or other strategic legal or factual circumstances) require immediate resort to civil/administrative remedies, as well as prompt criminal enforcement measures. The initiation of a parallel proceeding is also appropriate when the individual or institutional conduct involved in a civil or administrative action is so blatant or egregious as to compel filing of a criminal case.

These brief answers are elaborated upon in the following numbered Guidelines for Parallel Proceedings along with a summary discussion of the actual procedures to be followed in carrying out the Agency's enforcement program

Guidelines cannot cover every possible investigative and enforcement scenario. The primary objective of these Guidelines is to provide as clear an explanation as possible of the timing for contacts to be made with the Agency's criminal enforcement attorneys to confer with the administrative and/or civil enforcers. A list of criminal enforcement contacts is attached for ease of future reference.

These policies and procedures and internal office procedures which are referenced by or which implement these Guidelines are not intended to, do not, and may not be relied upon, to create a right or benefit -- substantive or procedural -- enforceable at law by a party to litigation with the United States. The Agency reserves the right to take any action purported to be at variance with these policies and procedures as the circumstances of any particular investigative/enforcement case(s) warrant.

NOTE: Lawyers, like engineers, have their own jargon. Legal proceedings are governed by specific, often very different, rules and requirements. Failure to gather information and document the information-gathering process correctly under applicable legal rules can mean that the data is legally inadmissible in some, if not all, enforcement actions. While these Guidelines have attempted to eliminate as much as possible the use of legal terminology, some terms have had to be used because of their specific legal meaning.

This guidance defines and explains by whom, why, when and to what purpose EPA uses parallel proceedings to maximize results and to minimize legal risks to all enforcement actions and to preserve limited enforcement resources.

First Guideline**PROCEDURES FOR EPA INVESTIGATIONS PRIOR TO INITIATION OF ANY ENFORCEMENT ACTION**

During an initial inquiry, EPA is receiving and gathering information to confirm suspected noncompliance in an area regulated by EPA. Although there may be enough preliminary information to indicate existence of a violation, at this time no decision at the program level should exist as to the method of correction for the noncompliance or as to any needs to achieve the other agency goals of punishment or deterrence. The Office of Regional Counsel (ORC), the Regional Program Development Manager or Divisional Chief in the program or media area affected by the inquiry, and the Special Agent in Charge (SAIC) will coordinate all enforcement efforts in order to identify initial inquiry situations involving the same facts and to focus investigations. They shall, within Agency policy standards, set priorities for enforcement and for investigations to select appropriate administrative, civil, and criminal cases, and to differentiate among enforcement actions for investigations conducted. The aims of investigative consultation and coordination are:

- . to minimize duplication of effort,
- . to select the most appropriate information gathering techniques and enforcement mechanisms, and
- . to assure observance of Constitutional and other legal requirements for information, information-gathering, and enforcement actions, whether administrative, civil or criminal.

Under usual circumstances, the initial inquiry constitutes the EPA administrative fact gathering, begins investigative processes, and may be performed by "civil" inspectors.¹ The investigation may also involve information volunteered by third parties or gathered by contractors. There may also be information gathering by criminal investigators as part of this initial process. Informal investigation information gathering techniques include interviews and inspections, information requests, subpoenas, and administrative warrants.

¹ Since all data gathered by the Agency's "civil" or regulatory inspectors, obtained in the normal course of their performance of their duties at EPA, is fully admissible in any subsequent criminal prosecution, their designation as "civil inspectors" can be needlessly misleading.

To preserve information as legally admissible evidence and to facilitate effective enforcement, EPA investigators - whether regulatory or criminal - and their technical support should always:

- . where possible, obtain information by methods other than through the Federal Grand Jury process; for example, by consent to inspect and by interview;
- . observe requirements for any warrants -- whether administrative, civil, or criminal -- since information obtained may be used as evidence in any enforcement action; in particular, they shall follow agency procedures for investigations and inspections;
- . summarize and place in separate files investigative information intended to be used as evidence in any subsequent enforcement action and obtained prior to, or independent of, a Federal Grand Jury; and,
- . never jeopardize any subsequent criminal - or civil - enforcement by assuring anyone that criminal action is not possible or declaring that the sole use of the information is for administrative or civil purposes, or other non-enforcement related Agency activity.

During the initial investigative processes, information will continue to be gathered by regulatory and criminal investigators and be fully exchanged and shared.^{2/}

² The exception to the sharing of investigative information by criminal investigators with civil investigators is limited to rare circumstances where wide distribution may not be appropriate in order to protect an informant or to preserve the secrecy of an ongoing undercover operation. The Special Agent-in-Charge of the Region where such confidential OCI investigation is occurring shall document the reasons for limiting information sharing in each such event. There is no general need to separate staff or refuse to share information within the EPA investigative processes until an enforcement method (or methods) is selected and/or a referral to the Department of Justice occurs.

Second Guideline**PROCEDURES FOR EPA INVESTIGATIONS WHEN ENFORCEMENT ACTION
ANTICIPATES EPA ADMINISTRATIVE OR DOJ CIVIL PROCEEDINGS**

At some point, an EPA inquiry into facts will become a more formalized investigation. Investigation may involve regulatory investigators only, or it may include the involvement of criminal investigators either from EPA or from State or other Federal agencies.

In accordance with established policy governing EPA inspections, no assurances as to the use of any information or the degree of enforcement action possible may be given to anyone by any EPA investigative person, including inspectors. There is no requirement to give the so-called "Miranda Warning" to any person from whom information is sought in an investigation unless that person has been taken into physical custody as part of a criminal enforcement action. Decisions concerning selection of the appropriate enforcement methods are neither the responsibility of, nor a proper subject of comment by, an investigator or inspector to members of the public. Investigative and inspection personnel are encouraged to coordinate actions and to seek informal assistance from EPA staff attorneys, including Criminal Enforcement Counsel, in order to ensure that enforcement elements are timely and correctly identified and that procedures to safeguard the investigation are followed.

A. THE USUAL CASE IS ONE WHERE THE COORDINATED INVESTIGATIVE REVIEW UNDER THE FIRST GUIDELINE REVEALS NO IMMEDIATE NEED FOR CRIMINAL PROCEEDINGS.

For many violations, there will be no readily apparent criminal potential. New evidence will continue to be gathered by the regulatory investigators. The Special Agent-in-Charge should share with them all relevant non-confidential information.

The regulatory investigator must be conscious of the fact that newly developed information may initiate or revive criminal aspects of any investigation.

B. THERE ARE SITUATIONS FOR WHICH, DESPITE VIABLE CRIMINAL ENFORCEMENT ISSUES, CIVIL OR ADMINISTRATIVE REMEDIES SHOULD PROCEED WITHOUT DELAY.

For example, when danger to human health is immediate, the need to stop activities posing the substantial risk or to compel action by a regulated entity to protect human life or health requires either prompt EPA administrative action or DOJ application for an expeditious civil remedy through the Federal Courts. In this instance, the Agency's ultimate goals of punishment or future deterrence are secondary. Only after

effective administrative or civil action is taken to protect human health or the environment should criminal enforcement proceed.

Also, there may be environmental or other fact situations in which the risk of harm is so great, so immediate, and/or irremediable that administrative or civil action prior to criminal enforcement efforts may be warranted. These fact situations requiring civil precedence will be determined on a case-by-case basis by the coordinated review and consultation processes in the Region. Disagreements should be resolved by the discussions between and concurrence of the Deputy Assistant Administrators for Criminal and for Civil Enforcement. In the event that the Deputy Assistant Administrators do not concur, the matter shall be referred to the Assistant Administrator for Enforcement and Compliance Monitoring for decision.

All EPA enforcement personnel should remember that appropriate administrative action or civil remedies to obtain environmental compliance may strengthen or support subsequent criminal enforcement.

Third Guideline

PROCEDURE FOR EPA INVESTIGATION WHEN CRIMINAL PROCEEDINGS ARE SELECTED AS THE ENFORCEMENT ACTION

Criminal prosecution becomes the EPA selected enforcement action by two means:

1. During the consultation and coordinated review by EPA in the initial inquiry and threshold investigative processes, Regional counsel, and program personnel agree with the Special Agent In Charge that a full criminal investigation is warranted and the best use of agency enforcement resources; or,
2. There is disagreement on the part of Regional personnel³ concerning the desirability, need for or merit of criminal prosecution as an enforcement mechanism under the existing facts and the matter is elevated ultimately to the Assistant Administrator for Enforcement and Compliance Monitoring through the Deputy Assistant Administrator for Criminal Enforcement, who determines if a criminal referral to the Department of Justice (DOJ) is then appropriate. When a violation(s) is determined to be appropriate for formal criminal investigation and has been referred through channels for review by the United States Attorney's office and by the Department of Justice, the matter is then officially an EPA criminal investigation and is under the direction of DOJ (including an office of a United States Attorney) with assistance of EPA legal staff.

Once a decision to refer a case to the Department of Justice has been made -- or a case is opened in response to a request from a United States Attorney or the DOJ -- the Special Agent-in-Charge will advise the affected Regional program or media chief and civil enforcement of the action, providing information as to the name(s) of the violator(s), location and sufficient subject

³ These Guidelines do not affect or supersede existing Agency General Operating Procedures, policies, management documents or studies providing authority to special agents to investigate or refer criminal matters or describing the responsibility of Agency personnel concerning reporting crimes. Those procedures and policies, especially the memorandum dated September 21, 1987, from the Assistant Administrator, Office of Enforcement and Compliance Monitoring to all Assistant Administrators (and any subsequent memoranda), remain in effect. Regional policy review and discussion of enforcement actions are directed toward resource allocation, and scheduling decision making, and is not a limitation upon or an interference with the law enforcement authority of investigative personnel or the responsibility to report or investigate criminal conduct.

matter so that on-going civil investigations can be identified, coordinated with, and distinguished as appropriate from the criminal case.

NOTE: Special Agents-in-Charge and Resident Agents-in-Charge are responsible for immediate notification of civil enforcement personnel when any criminal investigation is declined by the Department of Justice or United States Attorney for criminal prosecution, is returned, or is closed as an EPA criminal investigation by other than official judicial action. Subject to the exceptional limitations noted concerning protection of witnesses, of undercover operations, or for segregation of information protected as a result of Grand Jury development, all relevant information gathered by Office of Criminal Investigations shall be made available for civil enforcement use when a criminal investigation is declined, returned, or closed.

Fourth Guideline**PROCEDURES FOR EPA INVESTIGATIONS WHEN ADMINISTRATIVE OR CIVIL ENFORCEMENT ACTIONS ARE TO BE SOUGHT WITH CRIMINAL ENFORCEMENT -- THE PARALLEL PROCEEDING**

The true "parallel proceeding" occurs when an EPA administrative or Department of Justice civil enforcement action occurs at the same time that a DOJ criminal enforcement action is also ongoing. Different rules of legal procedure, standards of evidence and proof, and statutes of limitations during which it is legally permissible to bring specific enforcement actions apply to each type of proceeding.

When there is an immediate risk to human life or health or a significant environmental hazard, there exists a need for immediate action to abate a hazard or to stabilize a physical structure to prevent imminent deterioration which, unless addressed, will result in an immediate environmental harm. The fact of immediate hazard is one of the times when both EPA and the DOJ recognize that it is appropriate to have parallel proceedings. Such abatement or stabilization usually occurs in the context of a Federal court civil action but may also be accomplished through EPA administrative enforcement. Obviously, there is a question as to who decides when the situation constitutes a risk to human life or health or when an environmental hazard is sufficiently significant to warrant immediate administrative or civil judicial action. EPA as the agency responsible for administering the statutes and regulations which are to protect the environment and human health from undue risk, is the appropriate initial determiner of when a hazard or risk exists and its degree of environmental or health significance. The DOJ decides when a matter may be judicially brought and maintained in the Federal courts. An enforcement matter which EPA views as appropriate for a parallel proceeding may be rejected for legal or DOJ policy reasons; however, the initial decision concerning requesting and referral of enforcement matters as parallel proceedings is that of EPA. Therefore, agency policies within the programs and media provide guidance to staff on recommending enforcement measures and seeking abatement or other remedial action; these guidances should be followed.

Facts other than immediate environmental hazard or risk to human health may also justify application for parallel proceedings. Examples of facts which would be appropriate for parallel proceedings requests are those which would properly seek or result in the following:

--administrative order to stop-sale, stop-use, remove, cease and desist, or other similar equivalents to injunctive relief which are directed toward the preservation of financial assets or property, maintaining a factual situation status quo, or preventing physical alteration of existing circumstances.

--administrative order to modify, suspend, or revoke a permit, registration, or similar license or certification which is issued or approved by EPA discretionary action authorizing activities related to regulated, controlled, or hazardous substances or activities.

--administrative order to list or delist, to suspend, or debar from government contracts, grants or loans by which an entity receives money from or a right to benefit from financial activities with the United States.

--any order requiring remedial assessment, study or cleanup planning directed toward environmental protection or restoration.

--any order to prevent dissipation of assets or activity which is designed to result in bankruptcy or legal reorganization of a business or in dissolution of a corporation, association, partnership, company or activity licensed, chartered or registered under law.

--existence of an immediate statutory limitation deadline which might prevent future administrative or civil action to protect or restore environment or to seek punishment or financial compensation or damages.

--misconduct by individual persons or other entities which may be the object or subject matter of one enforcement action but has only marginal factual connection with a separate enforcement action of a different type.

In any situation where facts, in the judgment of Regional Program Managers for affected media, appear to warrant administrative or civil action, and if there is an identified, ongoing criminal investigation which has been referred formally to the Department of Justice, the request for parallel proceeding shall be prepared by the Office of Regional Counsel and forwarded to the Office of Enforcement and Compliance Monitoring for approval and referral to the Department of Justice. If there is an open criminal investigation which has not yet been referred to the Department of Justice, the decision concerning priorities of enforcement will be considered and handled within the Region and any disagreement among the affected media, Regional Counsel, and enforcement personnel (including the Special Agent-in-Charge) shall be ultimately elevated to the Assistant Administrator for Enforcement and Compliance Monitoring for decision.

A. WHEN THE DECISION TO SEEK PARALLEL PROCEEDINGS IS MADE PRIOR TO ANY ENFORCEMENT ACTION being selected by EPA there are requirements which must be observed. Among the required actions are the following:

1. Civil/administrative investigative staff, including supporting technical and legal personnel, will be separate from criminal investigation personnel.

2. Ongoing criminal investigations continue. Criminal investigators may receive information from existing civil or administrative investigations BUT MAY NOT DIRECT THE COURSE OR FOCUS OF ANY CIVIL OR ADMINISTRATIVE ACTION.

3. Ongoing civil or administrative investigations which are "good faith" or are only peripherally or marginally related to the criminal investigation, as determined by the Office of Regional Counsel, may continue. No information gathering techniques should be used solely for the purpose of developing evidence to be used in subsequent criminal action.

4. Since eventually it may be necessary to demonstrate the separation of criminal and civil or administrative staffs and their respective evidence or information gathering sources, the Region should begin formulating and shall maintain personnel lists and document the exchange of any information among the existing staffs.

5. The memorandum requesting parallel proceedings shall be prepared by the Office of the Regional Counsel, signed by the ORC and by the affected Regional Program Manager, and be directed to the Assistant Administrator, Office of Enforcement and Compliance Monitoring, Washington, for review and referral to the Department of Justice. The memorandum request for parallel proceedings shall include a brief factual outline of each of the proposed civil or administrative and criminal actions, including the goals which are to be obtained through the civil or administrative action, and shall specifically state the grounds for the request -- that is, the reason why civil or administrative action is needed at the same time as criminal enforcement. When the memorandum request is forwarded, simultaneous information copies shall be sent to the Deputy Assistant Administrators for Criminal and for Civil Enforcement and to the Chiefs of the Environmental Enforcement Section (EES) and Environmental Crimes Section (ECS), DOJ.

B. WHEN THE DECISION TO SEEK PARALLEL PROCEEDINGS IS INDICATED AFTER ADMINISTRATIVE OR CIVIL ENFORCEMENT ACTION BEGINS the same requirements apply as to when the decision is made before any enforcement action is selected. However, since the existing civil action may have been the focal point for disclosing possible criminal violations, all relevant information should be

turned over immediately to the SAIC in the affected Region. The Office of Regional Counsel and the Regional Program Chief(s) will ensure that existing investigative and enforcement staff are not involved in the criminal investigation.

C. WHEN THE DECISION TO SEEK PARALLEL PROCEEDINGS IS REQUIRED BY FACTS DISCOVERED AFTER CRIMINAL PROCEEDINGS BEGIN the course of action will be dictated by factual circumstances indicating a need for speedy, if not immediate, action. Under most situations, this option of seeking parallel civil or administrative enforcement action simultaneously with criminal action will be because of factual findings of immediate human health risks or environmental hazard. Occasionally, factors such as an indication of the wasting of assets needed for expected fines or dissolution of a company may warrant the initiation of a parallel proceeding after a criminal case has been referred by EPA to the DOJ. In this situation, the same requirements apply for immediate separation of staff.

Fifth Guideline**PROCEDURES WHILE AWAITING APPROVAL OF PARALLEL PROCEEDINGS**

When parallel proceedings have been requested, EPA personnel should act under the assumption that they will be approved, observing those policy and organizational requirements pertinent to each type of proceeding requested -- administrative, civil and/or criminal.

As noted earlier, it is necessary to divide and segregate personnel -- investigative, legal and technical -- who are to be associated with the respective criminal and civil judicial or administrative proceedings once there is a request to refer any matter to the Department of Justice. The required division and separation of personnel should be instituted while awaiting approval within EPA and by DOJ of the request for parallel proceedings.

Preparation of each action -- criminal and civil or administrative -- should continue on its own separate course. There is no requirement to suspend good faith civil or administrative investigations while awaiting approval; however, no information-gathering techniques should be used solely for the purpose of developing evidence to be used in subsequent potential criminal action.

Sixth Guideline**PROCEDURES WHEN PARALLEL PROCEEDINGS ARE DISAPPROVED**

There are two authorized actions necessary for any use of parallel proceedings:

First, the request must be approved by EPA as meeting Agency policy and resource capabilities, and, second, after EPA approval, the request for parallel proceedings must also be approved by the Department of Justice, when the request is for both criminal and civil judicial action. If EPA determines upon pursuit of the criminal action simultaneously with Agency administrative enforcement measures, the Department of Justice must indicate approval of the proceedings only to the degree that the proposed administrative action will not adversely impact upon Department of Justice conduct of the criminal action; the Department of Justice cannot veto Agency administrative efforts but may decline or refuse to pursue further criminal action or to initiate civil judicial proceedings.

What if EPA refuses to approve a request for parallel proceedings?

--If there is an ongoing criminal investigation which has reached Grand Jury or otherwise been undertaken by the Department of Justice, EPA civil and administrative investigations must be temporarily halted pending coordination with the criminal action. Information and evidence gathering activities by criminal investigators and by personnel associated with the criminal investigation shall continue. No additional civil or administrative action by EPA, except for routine or scheduled inspections or monitoring activities or for protection of emergency human health needs, may occur in the absence of criminal investigation coordination and concurrence.

--If there is no ongoing criminal investigation which has entered Grand Jury or is being directed by the Department of Justice, the Agency selects the preferred enforcement option after consultation among the Regional media program director(s) affected, the Office of Regional Counsel, and the Special Agent in Charge. The enforcement action selected by the Agency shall have priority and shall receive the benefit of all information gathered by any Agency effort to date.

What if EPA approves parallel proceedings, but the Department of Justice does not?

--If there is an ongoing criminal investigation and EPA wishes to pursue administrative action in support of Agency policies, environmental or public health needs, then the Agency shall maintain separate legal and investigative staff and personnel and may pursue its administrative action. The consequence of this election is that DOJ may refuse, or it may continue, to pursue criminal prosecution; if the criminal action continues, the Agency must ensure that there is no interchange of protected information from the criminal investigation to the administrative proceeding. Information and evidence gathering by criminal investigators and personnel associated with the criminal investigation continues under the prosecutorial direction of DOJ. Careful coordination and consultation at the upper management level is necessary to guarantee that the two actions proceed separately. Note, while information properly gathered by Agency personnel, including contractors and administrative inspectors or investigators, may be subsequently used by criminal investigators and in a criminal enforcement action, in no event may criminal investigators or personnel direct or select administrative information-gathering or enforcement efforts.

Seventh Guideline**PROCEDURES WHEN PARALLEL PROCEEDINGS ARE APPROVED**

In general, once parallel proceedings are approved, the respective criminal and civil (including administrative) enforcement efforts proceed in their individual courses. Personnel should conduct business as usual and perform their assigned duties. However, certain specific information may be helpful:

A. For Civil Enforcement Personnel --

-- If, at any time, any person asks about the existence or protection of individual rights (such as the right to counsel, to freedom from self-incrimination, etc.), the appropriate and proper response from an EPA employee is that "it is inappropriate for government personnel to offer advice on such matters, and you are free to consult your own attorney regarding them."

-- If, at any time, any person asks about the possibility of criminal culpability or prosecution, EPA employees shall respond that "the United States is free to choose civil, administrative or criminal enforcement, and any decision to take one type of action does not preclude another type of action."
NOTE: When a parallel civil or administrative proceeding has been approved (or the request for approval is pending either before EPA or DOJ), and EPA personnel are gathering information from a target or subject common to both the EPA administrative or civil and DOJ criminal investigations, EPA personnel should volunteer - - without unduly emphasizing -- the availability to the United States of criminal as well as civil or administrative enforcement capability for violations. This comment should be stated exactly as the response to a request for such information and should be that "the United States is free to choose civil, administrative or criminal enforcement, and any decision to take one type of action does not preclude another type of action."

-- EPA employees will not speculate, conjecture, or give assurances to anyone with respect to the use or non-use of any of the enforcement alternatives available to the Agency.

B. For Criminal Enforcement Personnel

-- any EPA Special Agent accompanying an EPA employee, other than another Special Agent, who is conducting a civil inspection or administrative fact gathering shall present his or

her badge and credentials and shall identify himself or herself as an EPA criminal investigator.

-- no Special Agent shall assume direction of or influence the focus of any civil or administrative enforcement action or information gathering process once approval for parallel proceedings has been requested.

Eighth Guideline**PROCEDURES AT CONCLUSION OF CRIMINAL ENFORCEMENT ACTION**

When criminal proceedings are completed, the case file will be closed by the criminal enforcement personnel and all pertinent information which was not derived by Grand Jury proceedings shall be provided to civil or administrative personnel for their use, if civil or administrative actions remain pending or have been suspended pending completion of the criminal matter.

NOTE: Although information gained through use of the Grand Jury processes is generally not available, there are special rules which may be invoked to allow subsequent civil or administrative access to and use of such information.

EASY ACCESS TO PARALLEL PROCEEDINGS GUIDANCE
THRU FIVE RULES OF THUMB

- 1) Civil/administrative and criminal enforcement actions may be conducted simultaneously whenever deemed necessary by the Assistant Administrator for OECM in order to seek immediate relief to protect human health or the environment.
- 2) Until the Agency refers a matter to the Department of Justice for possible criminal prosecution, all EPA employees should continue to collect information (data) from potential defendants with the understanding that it may be used for either a civil or a criminal enforcement action. Civil staff may always share information with criminal staff, subject only to "good faith" determinations. Criminal staff may share information with civil staff up to the time of Grand Jury proceedings, protecting confidential informants or covert investigation; after Grand Jury or official case referral by EPA, criminal staff may share information only with approval of the prosecutor.
- 3) No EPA employee should ever tell a person or entity from whom information is being sought that it will not be used by the Agency as evidence in a criminal prosecution. "Miranda" warnings are not required during civil or administrative fact gathering, including use of the information request, personal interview, inspections, presentation and execution of the subpoena, administrative warrant, or during administrative or civil discovery actions.
- 4) Once the Agency has referred a matter to the Department of Justice for possible criminal prosecution, all EPA employees who continue to collect information/data from potential defendants (unless acting as an investigator for the prosecutor's office or Office of Criminal Investigations) must have a clear need to obtain such data for an existing regulatory purpose that is wholly separate and independent of the criminal investigation.
- 5) Questions concerning ANY ISSUE relating to Parallel Proceedings can be ANSWERED by:

HQ - OEC	Keith A. Onsdorff	475-9666
	Associate Enforcement Counsel	
HQ - OEC	Kathleen King	475-9667
	Attorney/Advisor	

"Revised EPA Guidance for Parallel Proceedings", dated June 21, 1989. This document together with V.12. above, supersedes and replaces the documents at V.6.,V.7., and V.10. This document is supplemented by the document at V.14.



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

JUN 21 1989

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Revised EPA Guidance for Parallel Proceedings

FROM: Edward E. Reich *EE Reich*
Acting Assistant Administrator

TO: Assistant Administrators
Associate Administrators
Headquarters Enforcement Program Office Directors
Regional Administrators, I-X
Deputy Regional Administrators, I-X
Regional Counsel, I-X

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