

EPA/STATE AGENCY AGREEMENT

ON

COMPLIANCE ASSURANCE PRINCIPLES

May, 1997

Background

As part of the Performance Partnership process, EPA Region 10 and the environmental agencies of Alaska, Idaho, Oregon and Washington (State Agencies) have been working on a set of principles to guide our relationships and actions in compliance and enforcement matters. This document memorializes the discussions that have taken place amongst EPA and the State Agencies in February, March and April, 1997.

There are four major categories of principles described below. They cover: Collaborative Planning, EPA/State Role Definition, Performance Measurement/Oversight, and Information Sharing and Data Responsibilities. These principles also contain some significant agreements that have been reached. These include:

- * a commitment to "up front" planning within the PPA process to avoid problems, duplication, and surprises.
- * recognition of the State Agencies' "right of first refusal" on agreed upon work in a delegated program, except in those situations where regional or national initiatives warrant an EPA lead. Such exceptions would occur only after full and open consultation with the State Agency.
- * recognition that the State Agencies should make a commitment to define and negotiate EPA's role in a given year, and that the identified role must be a meaningful one and EPA must agree to it.
- * Recognition that the State Agencies and EPA should work together to define expectations and program review criteria.

The partnership/delegation relationship that exists between EPA and State Agencies clearly has paradoxical qualities that can lead to confusion regarding respective roles. Delegation often implies that the state or local agency is in the front lines, with EPA in a support role. Partnership, on the other hand, implies that both the State Agency and EPA are "shoulder to shoulder" on the frontline. These principles are designed to help EPA and State Agencies cope with this situation by emphasizing planning, joint priority setting, and complementary role definition.

COLLABORATIVE PLANNING

General

EPA and the State Agencies will coordinate their respective enforcement and compliance assurance planning efforts to complement the PPA process as appropriate. Planning should cover goals; priorities; resources; key activities and performance measures; and respective roles and responsibilities of the agencies.

Collaborative Planning Process

EPA and the States will engage in collaborative planning on a regular basis. The overarching principles for these interactions will include:

- * Managing for environmental results and high compliance rates.
- * Clearly articulating the enforcement and compliance assurance program mix and philosophy.
- * Each party bringing to the planning effort its entire body of compliance work, and committing to: 1) exploring the full range of regulatory tools, including compliance assistance approaches, and 2) addressing both large and small sources as part of its implementation efforts.
- * Establishing up-front agreements on roles, goals, priorities, and measures.
- * Adhering to the principle of "No Surprises".
- * Maximizing the effectiveness of agency resources, reflecting respective agency capabilities, and avoiding duplication of efforts.
- * Eliminating conflicting messages.
- * Including discussions of disinvestments and resource adjustments in any planning for new initiatives that arise during the course of the year.
- * Complying with existing interagency agreements, such as Compliance Assurance Agreements and the Ecology/EPA agreement on multimedia inspections.

The process should begin with each agency developing priority activity areas for a given year (or other planning cycle that the parties agree to). As part of the preliminary planning, each agency will consider the following guidance:

- * OECA MOA and Core Measures guidance. EPA is responsible for filtering this guidance into key performance expectations and measures, and for clarifying roles in support of these activities and measures. EPA Region 10 will work with OECA to avoid surprises and support the planning process;
- * the Region 10 regional strategy and any specific program strategies; and
- * EPA and State Agency program specific guidance.

EPA will solicit State Agency input on, and then communicate at the start of the planning process, the following:

- * Specific targeting priorities, including multimedia targeting, sector priorities, and other national compliance priorities.
- * Priorities for sharing state and EPA capacity.
- * Strategic directions for compliance assistance efforts.
- * Priority areas based on compliance rates or concerns regarding State Agency performance.
- * The mix of program specific versus general enforcement priorities. In particular, EPA will communicate cross-program priorities at the start of the planning process, and work internally to avoid conflicting messages to the State Agencies.

The State Agencies will bring to the preliminary negotiations the following:

- * State Agency enforcement and compliance priorities,
- * A description of State Agency core program activities, and
- * State Agency proposals for EPA's role in the priority target areas identified by EPA.

In the planning negotiations, clear procedures to implement the agreed on priorities and define respective roles should be developed. For EPA proposed efforts in delegated programs, State Agencies should have the "right of first refusal" to take on the work themselves, except in those situations where regional or national initiatives warrant an EPA lead. Such exceptions would occur only after full and open consultation with the State Agency. In turn, State Agencies will propose a role for EPA so that resources of both agencies are maximized and a federal enforcement presence is maintained.

The following are possible mechanisms for implementing the priorities that either EPA or the State Agencies identify, and should be specific outcomes of the PPA process:

- * The State Agency as primary implementor. This would generally represent the core program work in delegated programs. This core program work should be defined through either the delegation process, or defined between the State Agencies and EPA in such a form as the Compliance Assurance Agreement.
- * The State Agency accepts the EPA priority as its priority and does the work per agreed upon expectations.
- * EPA performs the agreed on priority action at the State Agencies request. This would typically happen in cases where resources or State Agency capability would cause the State Agencies to request this.
- * EPA does the work even if the State Agency does not want them to. One example of this would be where delegated State Agency programs are not performing adequately. Criteria and processes for this determination should be incorporated into program specific compliance assurance agreements.
- * The work does not get done. This should be jointly agreed to by both EPA and the State Agency during the PPA process.

EPA/State Agency Roles

EPA Roles

In Delegated Programs. EPA's principal role in delegated programs should be as "back-up" for the State Agency program. However, EPA should initiate an enforcement action under the following circumstances:

- * At a State Agency's request,
- * If a State Agency action is determined to be not adequate (In this situation, EPA will adhere to the "no surprises" principle).

- * As part of its agreed on role established in the annual planning process.

In non-delegated programs under CAA, CWA or RCRA authorities. Although a State Agency may implement a program under analogous state authorities, here EPA often is the lead on compliance and enforcement issues. However, EPA will also follow a policy of "No Surprises" in carrying out its responsibilities in these situations, and in the three categories of activities described below, unless inconsistent with Tribal sovereignty rights.

Role on Tribal Lands. EPA has a duty to address environmental issues on reservations, stemming from treaties the U.S. government has signed with the Tribes. EPA and Tribal governments are usually the only regulators on reservations, and no enforcement programs have yet been delegated to any Region 10 Tribes. Consequently, EPA has enforcement responsibilities with regard to all enforcement programs on reservations.

Role at Federal Facilities. EPA should be prepared take a lead role in dealing with Federal Facilities where requested by a State Agency program. Here State Agencies should play a significant role in identifying areas where a stronger enforcement presence is needed.

Coordination of civil and criminal programs. EPA and the State Agency will operate in a cooperative manner to define the criminal program role in the overall compliance and enforcement process.

State Agency Role

In delegated programs, the State Agency role is as the "front line" agency in program implementation. This includes helping to define EPA's role in the regulated community for a given program. Exceptions to this include those situations where regional or national initiatives warrant an EPA lead. These would be exceptional situations, such as the implementation of new federal regulations, or those instances where an individual state program does not have a comparable deterrence capability, e.g., against a single entity with facilities in more than one state, or to ensure a level playing field by recovering economic benefit and commensurate penalties from entities involved in a national market. Such exceptions would only occur after full and open consultation with the State Agency concerning the appropriate roles of the respective agencies in taking the action.

EPA/State Agency Joint Roles

Capacity sharing. In some instances EPA can help a State Agency improve its performance by providing technical assistance in a variety of forms. However,

capacity sharing is a two way street. There are many areas where State Agencies have knowledge and skills that EPA staff would benefit from. EPA and the State Agencies should actively seek opportunities in both these situations.

These general principles should be reflected in PPA discussions, and in Compliance Assurance Agreements.

PERFORMANCE MEASUREMENT/OVERSIGHT

General Principles

- * EPA will use differential oversight and a range of responses to assess State Agency performance, including "system level" reviews.
- * The primary focus of oversight should be on a whole program or "holistic" basis. Oversight inspections at individual facilities are a necessary part of developing this "holistic" approach.
- * EPA will limit its review of State Agency decisions to a standard of whether the delegated entities made factual errors in technical calculations, or errors in interpretations of federal law, regulations or guidelines.

Performance Measures

Within available resources,

- * EPA and the State Agencies will strive to measure accomplishments for the full spectrum of enforcement and compliance assurance activities.
- * EPA and the State Agencies will continue to count traditional activities, such as inspections and enforcement actions, but will also strive to measure environmental results where feasible.
- * EPA and the State Agencies will analyze, and present available information about: a) actions taken by the regulated community, b) the benefits of those actions to human health and the environment, and c) the level of compliance in priority industry sectors.
- * EPA and the State Agencies will continue to refine measures of success.

Oversight Inspections

Oversight inspections will focus on evaluating a State Agency's inspection and compliance assurance program. This will be done by evaluating the State Agency inspector and his/her compliance determination during the inspection and subsequent follow-up process. Part of this evaluation will include an off-site debriefing with the State Agency inspector to discuss EPA's initial compliance findings. Care will be taken to ensure that the facility does not receive conflicting messages from EPA and the State Agency. If there is a disagreement on

compliance issues, the dispute resolution process of these principles should be used. If the State Agency does not address in a timely and appropriate manner compliance issues raised by EPA, then the State Agency understands that EPA may overfile. In this situation EPA's action should be timely and appropriate.

INFORMATION SHARING AND DATA RESPONSIBILITIES

Working with Current Data Base Systems

It is important that both state and EPA programs are committed to using at a minimum the existing (national) compliance data systems. EPA and the State Agencies are working to make these program specific systems more user friendly, and better able to link data from the various media. However, along with that effort must come a commitment to using the systems we now have to their full advantage. These systems include AFS, PCS and RCRIS.

Ensuring Sufficient Information to Assess the Adequacy of Program Implementation

In addition to maintaining data systems, program offices should work with their State Agency counterparts to clarify the kinds of information and records that are critical for making these determinations. This work also needs to be integrated with current developments in how we define and measure success.

Collaboration to Define Critical Elements

In order to ensure that staff in both EPA and State Agency programs are fully aware of reporting priorities, improved and consistent definitions of common terms are needed. EPA and the State Agencies should collaboratively identify and clarify the most critical data elements.

MISCELLANEOUS

Integration with Existing Agreements

These compliance assurance principles reflect the current positions of the State Agencies and EPA Region 10. As appropriate they can be used to assist in the implementation of existing agreements. EPA Region 10 and the State Agencies will adhere to these principles when developing any future state/EPA agreements addressing enforcement and compliance matters.

Dispute Resolution

EPA and the State Agencies recognize that disputes may occur. All parties will attempt to resolve these disputes promptly and at the lowest level. If disputes cannot be resolved within seven days, they will be referred to the supervisor level. This supervisory referral and resolution process will continue, if necessary, to the level of State Director and EPA Regional Administrator.

Disclaimer

Nothing in these principles shall be construed to constitute a valid defense by regulated parties in violation of any state or federal environmental statute, regulation or permit. This agreement is not intended to, and does not, waive any authorities available to the states and EPA. Nor can this agreement be used to create a cause of action not otherwise available against the states or EPA.

Review

These principles and their effectiveness will be reviewed by the signatory parties in 1998 as part of the PPA planning cycle.

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