ENFORCEMENT AND COMPLIANCE STRATEGY

March 1997

U.S. Environmental Protection Agency

Region 10

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EXECUTIVE SUMMARY

This Enforcement and Compliance Strategy has been developed to provide a common set of expectations for all EPA enforcement and compliance programs, to ensure that EPA's actions are effective, efficient, and predictable. By enforcement and compliance programs, we mean a full range of activities which includes inspections, formal and informal enforcement actions, compliance incentive programs, compliance assistance, and support provided to other regulators to assure compliance. This strategy is intended to be a flexible framework that can be refined by individual programs, and is directed primarily to EPA staff who are working in enforcement and compliance programs, but we hope it is also useful to staff in other state, tribal, or federal agencies who have responsibility for implementing environmental programs.

In many programs, states conduct most of the compliance and enforcement work, and will continue to do so. This strategy is not intended to encompass those activities conducted by the states, tribes, or other co-regulators, although we recognize that some of the recommendations in the strategy will indirectly affect them. Our hope is that this strategy will help clarify the role that EPA plays in compliance assurance, and will provide the basis for a dialogue that will ensure that our programs are an effective complement to programs implemented by others.

Enforcement to assure compliance with EPA's regulatory requirements has been a central focus of the Agency's efforts since it was established. Since then, the number and complexity of regulations the Agency is responsible for enforcing has grown steadily, to sixteen major programs under several statutes. Although EPA shares responsibility for implementing these programs with a variety of federal, state, tribal, and local agencies, the public and Congress continue to look to EPA to ensure that environmental laws are being enforced consistently throughout the country. With increasing concern about federal budget deficits and corresponding budget cuts at the state, tribal, and local levels, there is increased pressure on the Agency to ensure that our resources are spent effectively.

It is more important than ever that we coordinate our efforts within the Agency and work collaboratively with other governmental agencies, and that we demonstrate the results of the public's investment.

The strategy includes baseline data so that we can make fact-based decisions and begin to measure the costs of the programs being implemented and their effects. These data include information on the Region's staff investments in enforcement and compliance and a brief description of current compliance and enforcement activities and how they are currently being targeted in the Region. Information on compliance rates will be presented in a companion document to this strategy, which is scheduled for development in the Spring of 1997. The strategy will be amended as we gather relevant information on the overall state of the environment and

more detailed information on the regulated community and the blend of enforcement and compliance tools being used by each program.

The strategy describes EPA's compliance philosophy, principles for EPA interactions with states and other partners, and implementation roles. The primary goal of the Region's compliance programs is to protect human health and the environment by fostering and promoting high rates of compliance with federal environmental laws by using both traditional enforcement and innovative tools where they are more likely to yield a successful result.

The strategy sets out operating principles intended to guide EPA's interactions with the Agency's co-regulators which describe the federal/state relationship in delegated and non-delegated programs. Specific principles include:

! The importance of "upfront" planning to avoid problems, duplication and surprises and to identify opportunities for worksharing and collaborative strategies.

! Recognition of a delegated program's "right of first refusal" to carry out work identified as high priority by EPA, except where regional or national priorities warrant an EPA lead. Such exceptions would occur only after full and open consultation with the state.

! Partners should make a commitment to help define and negotiate EPA's role -- a role which is meaningful and agreed to by EPA.

! Delegated Partners and EPA should work together to define expectations and program review criteria.

This section also includes information on how enforcement and compliance tasks will be shared within Region 10, and provides general guidance for programs to use in selecting an appropriate mix of compliance tools. The strategy suggests that we invest approximately three-quarters of compliance resources in traditional compliance activities such as compliance monitoring, compliance assistance, and enforcement.

Remaining resources should be devoted to innovative activities, including incentive programs which may later be mainstreamed if they are successful.

The strategy proposes a general performance goal and three complementary performance indicators. The performance goal, developed as part of the Region's re-organization effort, is to achieve and maintain high rates of compliance and a level playing field by using a full range of compliance activities, including targeted enforcement actions and compliance assistance. EPA is suggesting three different indicators be used to characterize compliance. The "significant non-

compliance rate" compares the number of significant, or high priority, violators to the total number of facilities that have undergone compliance evaluations. A second indicator, "the compliance rate," compares the number of facilities in compliance with the total number that have undergone compliance evaluations. The third indicator is the percentage of regulated facilities that were subject to some kind of compliance evaluation. The strategy explains how these would be applied to a sample program, cross-program uses, and their possible limitations.

The strategy makes five major recommendations to improve EPA's internal enforcement processes. First, to ensure that scarce resources are used most efficiently, the strategy recommends that enforcement and compliance resources be targeted, considering the priority geographic areas and sectors identified by the Region. Similarly, the strategy recommends that formal enforcement actions, which are resource intensive, should be pursued for the most serious situations, based on such considerations as actual or potential harm or risk, significant economic benefit gained, patterns or length of non-compliance, and degree of culpability.

A third recommendation deals with timeliness, establishing specific expectations for initiating enforcement actions and increased involvement by the Regional Administrator and Deputy Regional Administrator in measuring progress toward timeliness goals.

The strategy also recommends that all enforcement actions are accompanied by either a press release or other communication strategy and that the civil and criminal enforcement programs meet periodically to review the status of current cases and determine who should take responsibility for new cases.

The strategy identifies four major strategic directions, based on a comparison of the operating principles and measures of success with an analysis of current activities and resource trends. These strategic directions are intended to guide EPA's direct implementation work and the negotiation of subsequent agreements and strategies, including performance partnership agreements with the states, memoranda of agreement with Headquarters, and various program-specific strategies and agreements. These strategic directions include:

! Strengthening the core enforcement process by ensuring a sufficient inspection presence, timely initiation and completion of enforcement actions, coordination of civil and criminal programs, and conduct of periodic self-assessments.

! Improving the quality of enforcement and compliance data and access to integrated reporting mechanisms.

! Strengthening partnerships through performance partnership agreements, sector strategies, and implementation of the community-based environmental protection

strategy. The compliance assurance operating principles in this strategy should be reflected in FY 1998 performance partnership agreements.

! Pilot-testing innovative approaches and mainstreaming them if they are successful. The Region should consider working with its co-regulators to establish an Innovative Compliance Forum for this purpose.

Finally, the strategy identifies next steps for EPA to improve its timeliness, develop program-specific strategic plans, and target resources to priority areas. Steps to improve timeliness include developing program plans in cooperation with the Office of Regional Counsel, instituting quarterly status meetings with the Office Directors and the Regional Administrator, notifying the Regional Administrator of enforcement actions expected to exceed timeliness goals, and using a template cover memo that includes information on timeliness, the violation, proposed action, communication strategy, and coordination with the appropriate state and tribes.

An outline for program-specific strategic plans is included in the appendices to this strategy, and programs are encouraged to evaluate their programs to ensure they are strategically targeting their resources in priority areas.

1.0 INTRODUCTION

Congress created the EPA in 1970. Much of EPA's early work involved setting environmental standards and enforcing them. In recent years, EPA has made a concerted effort to expand its repertoire of tools to address environmental problems. Traditional enforcement is one of the most powerful and effective tools EPA has to ensure the protection of human health and the environment. The public expects us to ensure that minimum federal environmental standards are maintained across state and tribal boundaries, to prevent the development of pollution havens, and to take appropriate enforcement action.

The goal of enforcement is compliance. Compliance protects human health and the environment by keeping pollutant discharges at acceptable levels or preventing them altogether. However, enforcement is not the only way to achieve compliance. Region 10 has invested in other effective compliance tools such as education and outreach, a focus on industrial sectors, and compliance incentives programs. One of the major challenges for compliance programs is to allocate resources effectively. This compliance strategy is intended to assist Regional compliance programs by providing a conceptual framework for compliance activities, and information to guide program decision-making.

Purpose of The Compliance Strategy

The goal of this strategy is to guide EPA Region 10's compliance programs over the next several years. The Strategy:

!   provides a general description of the baseline, or current status, of Region 10's compliance programs;

!   clarifies and explains Region 10's compliance philosophy, role, and priorities;

!   describes some basic guidelines for how the Region implements enforcement activities;

!   provides Regional compliance programs with tools for making strategic decisions, such as balancing and allocating compliance resources;

!   lists some of the key enforcement policy and guidance documents that provide structure for the Region's compliance programs (see Appendix I);

!   identifies some specific actions or process changes that will help the Region achieve its compliance goals; and

! provides guidance for discussions with states during the Performance Partnership Agreement (PPA) process.

This is a dynamic document that should be periodically revised. The Office of Enforcement and Compliance ("OEC") assumes responsibility for this task as part of its coordination role in the Regional compliance process.

A Note on Definitions

There is often confusion about the meaning and use of compliance-related terms, especially relatively common ones such as "enforcement" and "compliance assistance." They are sometimes used together to convey a broad set of activities, while in other contexts they may have a relatively narrow meaning. In this Strategy, the following definitions apply:

! "Enforcement" refers to tools that EPA and delegated programs use to ensure compliance with environmental laws, including administrative actions, civil judicial actions, criminal actions, and notices of violation. The agency selects the appropriate tool for a given situation depending on the program involved and the nature and severity of the problem.

! "Compliance assistance" consists of information and technical assistance provided to the regulated community to help it meet the requirements of environmental law. First and foremost, compliance assistance ensures that the regulated community understands its obligations by providing clear and consistent descriptions of regulatory requirements. Compliance assistance can also help regulated industries find cost-effective ways to comply through the use of pollution prevention and other innovative technologies. In this strategy, compliance assistance means categories of activities, such as:

"   **outreach** to the regulated community,

"   response to requests for assistance, and

"   on-site assistance such as compliance consultations or audits.

Appendix II contains a list of acronyms, and Appendix III is a glossary for this Compliance Strategy.

2.0 REGION 10 COMPLIANCE BASELINE

This Compliance Strategy conceptually separates compliance **activities** from the way programs **target** their compliance efforts toward the regulated community. A typical compliance program may consist of a wide array of activities, from providing assistance and information and conducting inspections, to enforcement actions, to promoting innovation and pollution prevention. An effective compliance program selects and employs a mix of tools based on compliance needs. This chapter summarizes available information about:

! the current state of the environment in Region 10;

! the size of the regulated universe of each compliance program;

! general compliance and enforcement activities data, and proposals for new compliance based indicators;

! Regional FTE investments by program; and

! the relative investments of each program in various compliance activities and compliance targeting methods.

A later chapter of the strategy, Chapter 5, describes strategic directions for the Region based on observations about the baseline data.

This baseline review and the strategy itself cover nearly all of the programs EPA administers. This includes: NESHAPS, NSPS and SIP programs under the Clean Air Act; NPDES, SPCC/OPA and 404 programs under the Clean Water Act; Section 23 and Worker Protection programs under FIFRA; Subtitle C and Subtitle I (UST) programs under RCRA; 313 (TRI) and non-313 reporting programs under EPCRA; Drinking Water and UIC programs under the Safe Drinking Water Act; and PCB and core TSCA programs under TSCA.

Enforcement activities involving emergency response and NPL Site cleanups under the Superfund program are not included in this strategy. This strategy deals primarily with enforcement cases arising from violations of regulations, while Superfund enforcement focuses on establishing liability for cleanup -- a somewhat different type of enforcement. However, Superfund activities are a critical part of the regional enforcement program. Each year, Region 10 CERCLA enforcement efforts recover millions of dollars from PRPs, and compel many other PRPs to perform site cleanups. Formal CERCLA enforcement tools include civil judicial referrals to DOJ, compliance orders, consent decrees, administrative complaints and administrative settlements. This year, the CERCLA program projects they will double their 1996 enforcement action totals.

2.1 STATE OF THE ENVIRONMENT

[RESERVED]

[This section will summarize information from the OEA report on the state of the environment in Region 10, which is expected to be completed by fall, 1997.]

2.2 REGULATED UNIVERSE

The size of the regulated universe for various environmental programs varies significantly across programs states, and also over time. The nature of the regulated universe also varies. For some programs, such as those that issue permits, the size is well-known and relatively constant. For other programs, the number of identified facilities may be only a fraction of the actual universe. Table 1 sets out the numbers of facilities for various programs from 1992-1996. More detailed information about how the regulated universe of each program is defined may be found in the program summaries in Apppendix IV.

Table 1
Size of Regulated Universe for Various Programs and Jurisdictions

	Washing-ton	Oregon	Idaho	Alaska	Tribal Lands
PWSS	2,670-2,800	1,260-1,360	950-1,030	680-720	60-80
FIFRA [a]	23,800-31,100	10,800-13,400	11,900-12,300	1,010-1,910	N/A
NPDES (96 Only)	86 Maj 576 Min	70 Maj 1,181 Min	68 Maj 361 Min	224 Maj 862 Min	6 Maj 72 Min
RCRA[b] (96 Only)	50 TSD 4,711 Tot	21 TSD 1,228 Tot	10 309 Tot	16 559 Tot	N/A
Air	170 Maj 89 Min	233 Maj 445 Min	147 Maj 133 Min	88 Maj 82 Min	247 Maj 186 Min
TRI [c]	350-3,300	300-3,000	100-1,000	20-200	N/A

Notes
(a) - The potential FIFRA universe includes anyone that uses, sells or produces pesticides. FIFRA numbers in this table represent registered commercial and private applicators only. Not shown is number of producers, which are registered at the national level. Also not shown is distributors, which is not a well known number.

(b) - RCRA totals include TSD facilities, large and small quantity generators, and transporters.

(c) - The TRI universe ranges from the approximate number of known reporters (lower value) to possible reporters based on the number of facilities under SIC codes 20-39. If the Industry Expansion Rule becomes final as proposed, the universe size may increase by about 30%.

2.3 **REGIONAL COMPLIANCE AND ENFORCEMENT DATA**

Table 2 presents basic information on compliance evaluation and enforcement trends for Fiscal Years 1992 through 1996. The numbers (except for the CAA enforcement numbers) generally represent an aggregate of both EPA and state activity. These represent EPA's and the states' traditional measures for the various media programs.

In general, compliance evaluation and enforcement rates for most programs have decreased slightly over the past few years. There are a variety of possible explanations for this, including:

!   decreased resources devoted to enforcement activities,

!   increased complexity of new regulatory requirements, and

!   a shifting focus from traditional enforcement to compliance assistance approaches, most of which are not tracked in the media data bases.

This strategy does not attempt to anaylze these numbers in any detail, or to evaluate the validity of the hypotheses mentioned above. Their purpose here is merely to inform the reader as to activity trends at the most general level. This strategy proposes alternative measures in Chapter 4 that are more compliance based; OEC will work with the media programs to develop a regional report later in 1997 that includes these alternate measures.

Table 2

Regional Compliance Evaluation and Enforcement Levels

	FY92	FY93	FY94	FY95	FY96
Air [a] Evaluations	526	606	621	750	634
Enforcement	16	8	11	4	9
NPDES Evaluations	718	705	554	715	566
Enforcement	283	477	447	451	256
RCRA Evaluations	885	855	660	684	877
Enforcement	587	499	368	317	298
FIFRA Evaluations	1578	1641	1439	1393	
Enforcement	68	52	75	31	31
TSCA Evaluations	Data	Not	Avail.		
Enfrcmnt	85	96	83	43	37
PWSS [b] Evaluations	5625	5815	5870	5931	N/A
Enforcement	544	539	632	683	365

Notes
(a) - CAA enforcement numbers represent only EPA actions and only formal actions (NOVs are not included in the totals).
(b) - PWSS enforcement numbers represent only formal actions, NOVs are not included.

In addition to the civil enforcement program, there is also an OECA Criminal Investigation Division (CID) located in Region 10. Charting numerical data provided in Table 3 shows the number of indictments, criminal referrals, and convictions the CID has accomplished from 1992 to 1996. All of these CID outputs have increased during this time period.

2.4 STAFF INVESTMENTS

In 1995, approximately 35% (depending on the method of calculation) of the Region's total FTE was allocated by EPA headquarters for "enforcement." Table 4 shows how FTE have been allocated to different programs over the past ten years, and Table 5 shows the same information for the Office of Regional Counsel (ORC). Over this time period, it is interesting to note that the total amount of FTE allocated to the Region increased each year until it peaked in 1993. Since 1993, total Regional FTE has generally remained flat or slightly increased, while enforcement FTE have declined each year, as shown in Figure A.

Table 6 shows the ratio of enforcement outputs to enforcement FTE. Based on this table, it appears that this ratio was somewhat higher in past years. There may be many reasons for this, such as changes in the rate of the introduction of new programs and regulations. Identifying and evaluating such potential reasons is outside the scope of this Strategy at this time.

2.5 STATUS OF DELEGATION

Table 7 shows the status of delegation of various programs that EPA administers, along with current program contacts. While many of these programs are delegated to the states, it is worth noting that a significant portion are not.

2.6 ACTIVITIES AND TARGETING

The above section, Section 2.4, provided information about the number of staff people working on enforcement relative to other Region 10 work, and how these staff are distributed among the different programs. This is useful information, but it doesn't describe the types of activities on which program staff are currently working, nor how programs are directing, or targeting, their activities toward the regulated community. This section summarizes this kind of information in two tables. Table 8 shows current levels of Region 10 program investments in compliance activities; Table 9 shows how programs target their resources. The key in both tables -- Major, Mod(erate), Minor -- refers to the relative level of EPA program resources invested.

Table 8, entitled "Compliance Activities," groups compliance activities into several broad categories:

! **Enforcement** consists of EPA's traditional enforcement tools, including formal administrative, civil judicial, and criminal actions; and informal enforcement activities, such as notices of violation (NOVs) and warning letters.

!   **Compliance Monitoring** means any type of check that is done to evaluate whether a facility is in or out of compliance. Examples are inspections, paperwork reviews, or computer data scans.

!   **Compliance Assistance/ Information** refers to information or assistance regarding compliance that is provided by EPA to the regulated community.

!   **Support to Other Regulators** includes activities that build, strengthen, or ensure the effectiveness of other regulators' compliance activities.

!   **Support to Tribes** has been separated out from "Support to Other Regulators" because there are many federally recognized Tribes in Region 10, and EPA's responsibilities with respect to Tribes are different than with respect to states.

!   **Permit Review** includes reviews of proposed permit conditions for enforceability.

!   **Marketplace** activities are initiatives or policies that are driven by market pressure.

Table 9, "Compliance Targeting," shows how Region 10 programs direct their compliance resources in the regulated community. The major categories of investment are:

!   **Sectors**: A sector is a distinctive segment of the economy. Sector facilities may share similar locations, inputs, operating processes, discharges, or compliance requirements. Shared characteristics make sectors an efficient means of targeting compliance resources. Agriculture, automotive repair shops, and dry cleaners are examples of sectors.

!   **Geographically Based Environmental Protection (GBEP)**: GBEP refers to targeting compliance resources in a coordinated fashion toward a geographic area such as a watershed or community.

!   **Media Priorities**: Media programs have national or regional priorities, statutory mandates or agency policies which influence targetting of resources (e.g., complaint response policies or the RCRA statutory requirement for inspections).

!   **Multimedia**: Multimedia means an action (e.g., inspection, enforcement) that coordinates the efforts of two or more program offices. The region has been doing targeted multimedia inspections for about 10 years. Additional "mini" multilmedia inspections or actions occur beyond those done as part of the region-wide targetting process.

!   **Incentives**: Incentives include policies or initiatives that are intended to achieve compliance by motivating the regulated community with incentives, such as regulatory flexibility.

3.0 OPERATING PRINCIPLES

This Chapter describes the Region's philosophy and role with regard to compliance, and explains how the Region defines and measures success. It describes values the Region holds with respect to compliance, including the importance of maintaining a field presence, selecting enforcement tools that maximize results, and conducting strategic and timely enforcement.

3.1 COMPLIANCE PHILOSOPHY

The primary goal of the Region's compliance programs is to protect human health and the environment by fostering and promoting high rates of compliance with federal environmental laws. Traditional compliance monitoring and enforcement activities are and will continue to be an essential element of our compliance efforts. The Region intends to invest sufficient resources in compliance monitoring and enforcement to maintain a strong deterrent effect.

With each action EPA takes, the Agency should always try to strategically select and use tools that are most likely to provide maximum results. In recent years, EPA has increased its use of innovative tools, and the Agency should continue to select innovative tools in situations where they are more likely than traditional approaches to yield a successful result. The first priority, however, is to achieve and maintain deterrence through traditional tools before investing in innovative approaches.

The Region's compliance programs must be viewed in the context of related regional work. There is considerable overlap and interaction between compliance work and other basic EPA work elements, such as issuing permits and state program development. EPA's work can be improved by recognizing and enhancing these connections, and by moving forward to make the principles and philosophies of sustainable development, pollution prevention, and environmental justice an integral part of that work.

3.2 ROLES AND FUNCTIONS OF KEY ORGANIZATIONS

Much of the work in Region 10 to ensure compliance with environmental laws is carried out by agencies other than EPA. These agencies include:

!   state regulatory agencies

!   tribal governments

!   local communities

!   other federal agencies

The EPA Region 10 office and EPA headquarters each have unique roles in helping agencies achieve measurable results in environmental protection. EPA headquarters has a national role in establishing regulations and policies, and providing the resources that are devoted to enforcement and compliance programs.

Within the Regional office, the organizational units involved in compliance include:

! the media compliance programs

! Office of Enforcement and Compliance (OEC)

! Office of Environmental Assessment (OEA)

! Office of Regional Counsel (ORC)

! Office for Innovation (OI)

! Office of Ecosystems and Communities (ECO)

! Office of External Affairs

! Operations Offices

! Tribal Office

! Executive Team

3.2.1 **State and Tribal Programs**

State and tribal governments play a critical role in the enforcement and compliance process. The manner in which this work is carried out depends on whether a program is delegated, and on other factors such as available resources and the level of expertise of a particular state or tribe. Implementation of some activities is shared between federal and state or tribal governments. Each state or tribal program tends to have unique characteristics in terms of its delegation status, resources, and environmental issues. Consequently, EPA's role and relationship with each state and tribal program also tends to be unique.

The regional EPA office generally has fewer staff and resources in a given program than the Region's state counterparts. Tribes have even fewer staff and resources. As a regional office, therefore, one of EPA's most important roles is to build, strengthen, and coordinate with state and tribal programs. The Region should focus on

building constructive relationships with states and tribes that allow coordination of environmental protection efforts.

Status of Program Delegations

Delegation issues are complicated because they vary by program and by state (see Table 7). For example, some enforcement programs may be delegated to states and tribes; others are not legally delegable and are retained by EPA. A program may be delegated to some states but not others. Some programs may be fully delegated. A particular state may not be delegated a certain delegable program, but may nonetheless invest resources in performing some types of compliance activities related to that program.

To date, no enforcement and compliance programs have been delegated to any Region 10 tribes, although some tribes have expressed interest in receiving delegation. Because many of the issues involving tribal programs that receive delegation in the future will be similar to those of currently delegated state programs, this discussion references both.

EPA's role in direct program delivery in non-delegated programs is relatively clear. However, the Agency is sometimes asked whether EPA has a role and, if so, the nature of that role, in programs that have been delegated to a state. In fact, EPA will always have an ongoing role, albeit an often indirect one, in delegated states because:

!   EPA and states have different responsibilities;

!   EPA has statutes and policies that require continuous federal involvement;

!   EPA must ensure the state is carrying out its delegated responsibilities;

!   EPA must ensure that federal environmental requirements are fairly and uniformly enforced across geopolitical boundaries;

!   EPA must ensure the universe of regulated entities is addressed;

!   EPA must enforce those requirements which the state cannot or will not; and

!   EPA plays an important role in fostering innovation and environmental leadership by promoting and coordinating national initiatives and policies.

3.2.2 Operating Principles for EPA Interactions with States and other Partners

This strategy proposes a set of operating principles to guide EPA's relationship with states and other partners in the enforcement and compliance process.

Background

Basic tenets for these relationships were set out in 1984 and revised in 1986. For individual media programs, EPA and the states have developed and revised agreements that outline roles and performance expectations. These agreements are often referred to as Compliance Assurance Agreements or State/EPA Enforcement Agreements. The basic tenets include: [1]

!   clear evaluation criteria, specified in advance, so that EPA can assess state enforcement program performance;[2]

!   clear criteria for direct Federal enforcement in delegated states with procedures for advance consultation and notification; and

!   state reporting that enables EPA to assess the performance of delegated programs.

Beginning in FY 95, the Performance Partnership Agreement (PPA) emerged which changed the fundamental nature of the relationship between EPA and the States. As true partners in protecting the environment and public health, the following principles should guide this relationship:

!   agreement as to environmental conditions in a state and probable causes of environmental problems;

!   agreement on appropriate national and state-specific environmental goals, along with state commitments for specific deliverables and types of activities;

!   agreed upon allocation of federal resources;

!   agreed on commitments for federal technical assistance; and

!   agreed-upon joint ventures and strategies.

FY 97 PPAs were negotiated with each Region 10 environmental state agency (e.g., Washington Department of Ecology), though only the PPA for Washington covered more than water programs. These agreements generally deferred to all

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[1]   See "Policy Framework for State/EPA Enforcement Agreements," August, 1986, EPA Office of Enforcement and Compliance Monitoring.

[2]   For instance, the Region 10 RCRA program has developed, in coordination with Region 10 states, a document entitled "EPA Region 10 RCRA Compliance Program Evaluation Guide," June 1994, which describes the elements of a state "quality compliance program," discusses specific measurements of a quality program, and describes procedures and protocols for conducting RCRA program evaluations.

previously existing agreements with respect to enforcement and compliance roles (such as Compliance Assurance Agreements.)

Two important national guidances relevant to EPA's relationship with states and other partners are "Operating Principles for an Integrated EPA Enforcement and Compliance Assurance Program" and "Core EPA Enforcement and Compliance Assurance Functions". (Appendix I - Section O).

EPA/State Compliance Assurance Principles

As part of the Performance Partnership process, on March 19, 1997, EPA and Region 10 states reached agreement on a set of principles to guide our relationships and actions in compliance and enforcement matters. While the March 19, 1997 agreement and document specifically relate to EPA's relationship with the State Environmental Agencies for the Air, Water and Waste programs, the principles should generally apply to EPA's interactions with any of its partners.

The prinicples cover the following four major themes: (1) Collaborative Planning, (2) EPA/State Roles, (3) Performance measurement/Oversight and (4) Information sharing and Data Responsibilities. A copy of the document is attached as Appendix X. Specific principles include:

!   The importance of "upfront" planning to avoid problems, duplication and surprises and to identify opportunities for worksharing and collaborative strategies.

!   Recognition of a delegated program's "right of first refusal" to carry out work identified as high priority by EPA, except where regional or national priorities warrant an EPA lead. Such exceptions would occur only after full and open consultation with the state.

!   Partners should make a commitment to help define and negotiate EPA's role -- a role which is meaningful and agreed to by EPA.

!   Delegated Partners and EPA should work together to define expectations and program review criteria.

Overfiling Actions in a Delegated Program

"Overfiling" is often used to describe a Federal action taken in a state where a program is delegated. In the truest sense, "overfile" means a Federal action which is taken in addition to an action taken by the delegated program; e.g., a Federal action that seeks additional injunctive relief or a higher penalty. More often, the term is used to describe a situation where EPA is taking action after notice to a delegated program

that it lacks timely or appropriate action. In Region 10, there have been very few "overfile" actions by either of these definitions.

In general, Region 10 should overfile only after opportunity was provided for the state to take appropriate and timely action. This is consistent with the "right of first refusal principle" articulated in the EPA/State compliance assurance principles referenced in the previous section. We should overfile only in circumstances where a strong message would be appropriate and effective, and where any one of the following conditions exists:

(1) a state program is failing to maintain compliance with federal environmental requirements as compared with other states' programs, creating the potential for development of a "pollution haven". Ensuring compliance with minimum federal requirements across political boundaries is important because it enhances EPA's credibility with the regulated community. Facilities depend on EPA to ensure that their competitors in other states are being held to the same minimum federal environmental requirements.

(2) a state's action with regard to a regulated entity does not serve as an adequate deterrent to continued non-compliance on the part of a facility or an industry; or

(3) a state's action or lack of action with regard to a regulated entity has allowed non-compliance to continue beyond a reasonable time.

Over time, our goal is to develop a common understanding with states about expectations for program performance; the balance and relationship between oversight of individual cases and general program performance; and how that balance relates to EPA's actions in response to concerns about state performance.

Decisions to "overfile" are not made lightly, are made by senior managers in the Region and are made in a broader context: what is going on with a state's compliance/enforcement program, the particulars of the situation at hand, and what benefits are to be gained by EPA's action in this case.

True overfiling situations are few and taken where Federal action would create important deterrence. In this event, the appropriate agency should be notified in advance.

3.2.3 **Environmental Protection and Tribal Governments**

There are 266 federally recognized Tribes in Region 10, 40 of which have reservations:

	AK[3]	ID	OR	WA
Federally Recognized Tribes	226	4	9	27
Tribal Reservations	1	4	9	26

EPA has a duty to address environmental issues on reservations, which derives from treaties the U.S. government has signed with the Tribes.[4] EPA and Tribal governments are the only regulators on reservations -- states do not have jurisdiction, although some state programs may be involved in Tribal issues in some circumstances. Because no enforcement programs have yet been delegated to any Region 10 Tribes, the Region has responsibility with regard to all enforcement programs on reservations.

As described earlier in this Chapter, EPA and the Tribes have regulatory authority on Tribal lands. Because no enforcement programs have yet been delegated to any Region 10 Tribes, the Region has responsibility for enforcement of EPA requirements. However, wherever possible, EPA should coordinate with tribal governments and involve tribal environmental staff in data collecting, inspections, and follow-up. If EPA conducts an inspection of an entity on a reservation that is owned or managed by the Tribal government and a violation is found, Regional staff should consult EPA policies with regard to Tribes.[5] If the entity is located on Tribal lands but is not owned or managed by the Tribal government, staff should coordinate, as appropriate, with the Tribal government to address the violation. If the Tribe has ordinances that could adequately address the violation, EPA should ask the Tribe if it wants the enforcement lead.[6] EPA does not need permission to take an action on Tribal lands, but we should coordinate with Tribal governments when the facility is not owned or operated by the Tribal government.

The Region is working to establish Tribal Environmental Agreements (TEA) agreements with each Tribal government in Region 10. The general objective of a TEA is to take a holistic view of all the environmental issues on a particular reservation, and describe Tribal priorities and how to build Tribal capacity to address them. On

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[3] Alaska has many Tribes but only one reservation. Most Alaskan Tribes did not receive reservation lands under the treaties they signed with the United States. These Tribes are known as Alaskan Native Villages (ANV).

[4] EPA may also have enforcement responsibilities with regard to Tribes that do not have reservations but have certain treaty rights.

[5] See Appendix A, Section XVIII for a list of policy and resource documents regarding Tribes.

[6] Because of the sovereign nature of Tribal governments, they can take a lead enforcement role if they have regulations that EPA agrees would adequately address a violation, even if the relevant EPA enforcement program has not been delegated to the Tribe.

reservations where TEAs have been established, each Regional program should work with the Region 10 Tribal Office to coordinate its enforcement efforts with the TEAs.

Region 10 programs vary significantly with respect to their degree of involvement with Tribal issues. Some enforcement programs, such as the Safe Drinking Water Act program, have been delegated to all Region 10 states but not to Tribes. In these programs, EPA Region 10 staff may devote a significant amount of their time to Tribal issues.

3.2.4 Federal Facilities Compliance

In terms of both land size and numbers of facilities, federal facilities operations represent a major portion of the regulated universe. In significant areas they are also co-regulators. In working with federal facilities, EPA should strive to:

!   Highlight issues with other federal agencies at the senior level. EPA has recently initiated a NW Senior Executive Environmental Forum for this purpose.

!   Ensure that EPA is fulfilling its regulatory duties at federal facilities. Special attention should be paid to civilian federal agencies.

!   Actively look for worksharing opportunities. This is discussed more in the next section.

3.2.5 Region 10 and EPA Headquarters

As mentioned previously, EPA headquarters' role includes developing regulations, policies, and guidance; and providing resources to support compliance and

enforcement work. The regional office, in turn, serves as a conduit for the regulations, policies, guidance, and resources flowing from EPA headquarters to states, tribes, local governments, and the public. The regional office is responsible for applying broad national directives and turning them into specific regional plans with measurable outputs. Another important role for the regional office is to complete the information loop by funneling information back to EPA headquarters about how national regulations or policies are working at the regional, state, and local levels, and to work with headquarters to make changes where appropriate.

In the enforcement and compliance arena, these general concepts are memorialized in a biannual Memorandum of Agreement ("MOA") between the region and EPA headquarters. This MOA describes the Region's enforcement priorities and plans, and identifies areas where headquarters' support is critical to success.

3.2.6 Leveraging the Effectiveness of Other Regulators

In addition to ensuring that EPA's state partners are effectively managing their responsibilities under the many delegated programs they operate, a key objective the Region needs to continue to focus on is building and strengthening the capacity of other regulators to increase the overall effectiveness of federal environmental programs. "Other regulators" include other federal agencies, states, tribes, local government entities, and even citizens. The Region can leverage the effectiveness of other regulators by providing opportunities for worksharing, funding assistance, and technical and legal support, as appropriate. These opportunities are described below:

! **Worksharing**: Worksharing arrangements allow EPA flexibility to provide support to delegated programs in areas where it is most needed, and to utilize the expertise and resources of other agencies. EPA should promote worksharing arrangements as part of the PPA discussions with states. MOA's, such as the one between EPA and the Idaho Department of Agriculture for dairy inspections, are another type of worksharing arrangement that EPA should explore more fully. Regular communications with EPA's key partners are necessary to agree on common goals and realize each agency's particular strengths in order to most intelligently develop these arrangements.

! **Funding Assistance**: A wide range of compliance and enforcement programs depends on EPA and other federal funds for their success. This is particularly true of innovative programs, such as the many compliance assistance outreach programs conducted at the federal, state, and local level. EPA should encourage State, Tribal, and local governments to explore and propose innovative projects that would complement traditional enforcement. The Executive Team should take an active role in helping to find funding for worthy proposed projects.

!   **Legal and technical support**: In general, providing Regional legal and technical support to assist delegated programs in developing enforcement actions is an important activity in which EPA should continue to invest. To provide support and respond to requests, EPA needs to maintain a core capability here in the Region in areas such as inspections, sampling, monitoring, engineering, and legal expertise. This requires a significant regional investment.

3.2.7 Enforcement and Compliance Tasks within Region 10

Region 10's reorganization efforts over the past two years have specifically identified "compliance with environmental laws" as a core process for the region. In July and August 1995, several work groups developed this general concept into several specific tasks, and then further delineated the roles of each of the newly created offices in accomplishing these tasks. This strategy makes some minor changes to that framework, but essentially keeps it as it was originally envisioned. Table 10 and the text below describe the critical tasks within the "compliance with environmental laws" core process and the roles of key offices in helping the region accomplish them. Office roles can include one or more of the following: leading, consulting, supporting, informing and approving. The discussion here will focus largely on the lead, support and consult roles.

!   **Defining Success.** Region 10 will measure and report the results and impact of enforcement and compliance activities. In particular, a successful program will achieve the goals set forth in this strategy.   The work includes tracking key enforcement and compliance indicators, managing the workload (pipeline), and providing a feedback mechanism to ensure improvement.

Roles: OEC has the lead; media programs and ORC provide support; Tribal Office, OEA and Ops Offices are consulted.

!   **Relationships with Other Governmental Entities and the Public.** As mentioned previously, an effective enforcement and compliance program requires constructive partnerships with state, tribal, and local governments and increased public involvement in efforts to achieve increased compliance with environmental laws. Region 10 will contribute to such efforts by: increasing the involvement of states in setting priorities and developing strategies to address enforcement and compliance problems; ensuring a clear delineation of roles and responsibilities between EPA headquarters, EPA regions, states, tribal units, and local governments; building capacity at the state, tribal, and local levels to conduct effective compliance and enforcement programs; and increasing outreach to the public for the purposes of information sharing and education.

Roles: OEC has lead responsibility; media programs, ORC, External Affairs and Operations Offices provide support; Tribal Office is consulted.

! **Outreach and Technical Assistance on Regulations**. Region 10 will enlist the public in its efforts to increase compliance by ensuring public access to data and other information concerning environmental conditions, enforcement and compliance activities, and patterns of compliance/non-compliance in the regulated community. The region will offer technical assistance as appropriate to: improve compliance with, and understanding and awareness of, environmental laws and regulations; increase pollution reduction or prevention efforts; and enhance opportunities for partnerships with stakeholders. Special efforts will be made to include communities of color, low income communities, small communities, and small businesses in these endeavors.

Roles: Media programs have lead; OEC, Operations Offices, ORC, OEA, and External Affairs provide support; Tribal Office is consulted.

! **Planning and Targeting.** Region 10 will plan and target for enforcement and compliance activities in order to :

" conduct effective compliance monitoring;

" take formal enforcement actions where necessary and appropriate;

" develop and deliver compliance assistance; and

" periodically re-evaluate the efficacy of choices made and activities carried out in this process.

Roles: Shared lead among OEC and media programs; OEA, OI provide support.

! **Fostering Innovation**. Region 10 will encourage compliance with environmental laws through the use of economic tools such as market-based incentives, pollution prevention and waste minimization. The Region will promote activities which go beyond compliance, such as self-auditing and reporting by the regulated community, Environmental Management System standards such as ISO 14000, and more advanced "beyond compliance" programs such as ELP and Project XL. Region 10 will also implement other appropriate aspects of the President's Reinvention agenda.

Roles: Lead between OEC and OI has not been determined.

! **Compliance Monitoring and Data Collection.** The following activities are critical elements of compliance monitoring in Region 10:

" Conducting mandatory/"majors"/SNC facility inspections not addressed by the states;

" Inspector training and guidance;

" Reviewing permits, exception reports, certifications, monitoring protocols, self-monitoring reports, etc.;

" Making applicability determinations;

" Supporting the regional laboratory; and

" Promoting data generation by the regulated community which is documented, accurate, and of reliable quality, such that credible environmental and compliance decisions can be made using such data.

Roles: Media programs have lead; OEC, OEA, ORC and Ops Offices provide support.

! **Case Development and Follow-Up**. The following activities are critical elements of the case development and follow-up process:

" Developing and issuing administrative orders and notices of violation;

" Developing civil and/or criminal referrals to the U.S. Department of Justice, as appropriate and necessary;

" Overseeing compliance with schedules contained in final orders and consent decrees;

" Reviewing proposed SEPs and monitoring approved SEPs; and

" Publicizing enforcement actions.

Roles: Media programs have lead; OEA, ORC, External Affairs provide support; Tribal Office, OEC are consulted.

! **Re-evaluation**. The region will regularly re-evaluate the core processes to ensure they comply with environmental laws, and assess the region's success in its efforts to meet the goals of the long-term compliance strategy. Where goals or processes are found to be in need of change, these will be addressed through

revisions in this strategy or changes in regional priorities. The Office of Enforcement and Compliance will be the lead office for ensuring that re-evaluations and appropriate responses are carried through in a manner which ensures that the Region is on an efficient and effective track for ensuring compliance with environmental laws.

Roles: OEC lead; Media programs, ORC, Ops Offices, OEA provide support.

3.3 DEFINING SUCCESS

EPA considers its compliance programs to be successful when the Agency achieves and maintains high rates of compliance with environmental laws and fosters pollution prevention.[7] In order to accomplish this, EPA should always strive to:

!	Set priorities for bringing cases that reflect strategic choices for a given program:

!	Ensure fairness: EPA needs to ensure that all people receive equal protection under environmental law, regardless of race, ethnicity, culture, income, or education level. It also means not playing favorites with respect to regulated entities and treating members of similar groups similarly.

!	Maintain a credible rate of activity: EPA must maintain a deterrent enforcement presence by conducting a sufficient number of inspections followed by timely and appropriate actions. Sufficient travel funds should be allocated for field work. This level will vary from program to program, depending, in part, on a given state's efforts in that area.

!	Eliminate the economic benefit of non-compliance: To promote deterrence and ensure a level playing field in the regulated community, programs must ensure that *all* formal enforcement actions issued by EPA for non-compliance fully capture the economic benefit of non-compliance. Programs with delegated state partners must also address this issue in their program specific strategies. This measure is a cornerstone of our enforcement program.

!	Publicize the things we do: Because we are typically able to inspect or interact with only a fraction of the regulated community, publicizing our activities is critical for maintaining deterrence.

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[7]	It should be noted, however, that there are many variables beyond the control of a program that could prevent the achievement of increased compliance over time. For example, the introduction of more stringent regulations, which is a regular occurrence in some programs, would tend to decrease compliance rates. A growing universe of regulated facilities could have the same result. Over time, changes in program policies, data tracking systems, or inspection quality could also affect the calculation of compliance rates.

!   <u>Develop and maintain staff credibility</u>: We should continually assess training needs and invest in training to ensure that compliance staff are highly qualified.

!   <u>Consider innovative compliance approaches</u>: Appendix VI summarizes pilot projects, some of which we may be able to transfer to other states and programs.

!   <u>Strive for Timeliness of Enforcement</u>: Programs should develop timeliness measures for their enforcement work, then track their performance in this area, and look for ways of gradually but continually improving their performance.

3.4 **MEASURING SUCCESS**

Historically, EPA and the states have measured success in terms of basic enforcement statistics such as numbers of inspections, enforcement actions, and penalty amounts. A brief evaluation of trends in these areas was provided in Chapter 2. Ideally, EPA would like to measure the environmental results of the agency's efforts more directly in terms of actions taken by the regulated community, reductions in emission rates, and ultimately reductions in ambient concentrations of pollutants. The indicators proposed in the next section are an attempt to move current measurement systems farther along in this area. This general evolution is indicated in the figure below.

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│ ║                                                                       ║ │
│ ║  •ACTIONS BY              ┌──────────────┐                            ║ │
│ ║   EPA/STATES              │  ACTIVITY    │                            ║ │
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│ ║  •ACTIONS BY REGULATED    └──────┬───────┘         IMPROVEMENT        ║ │
│ ║   COMMUNITY                      │                 EFFORTS            ║ │
│ ║                                  ┤                                    ║ │
│ ║  •DISCHARGE/EMISSION             │                                    ║ │
│ ║   QUANTITIES                     ┤                                    ║ │
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│ ║  •AMBIENT CONDITIONS/            │                  │                 ║ │
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│ ║  •BODY BURDENS/                  │                  │                 ║ │
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│ ║                          │ ENVIRONMENTAL │                            ║ │
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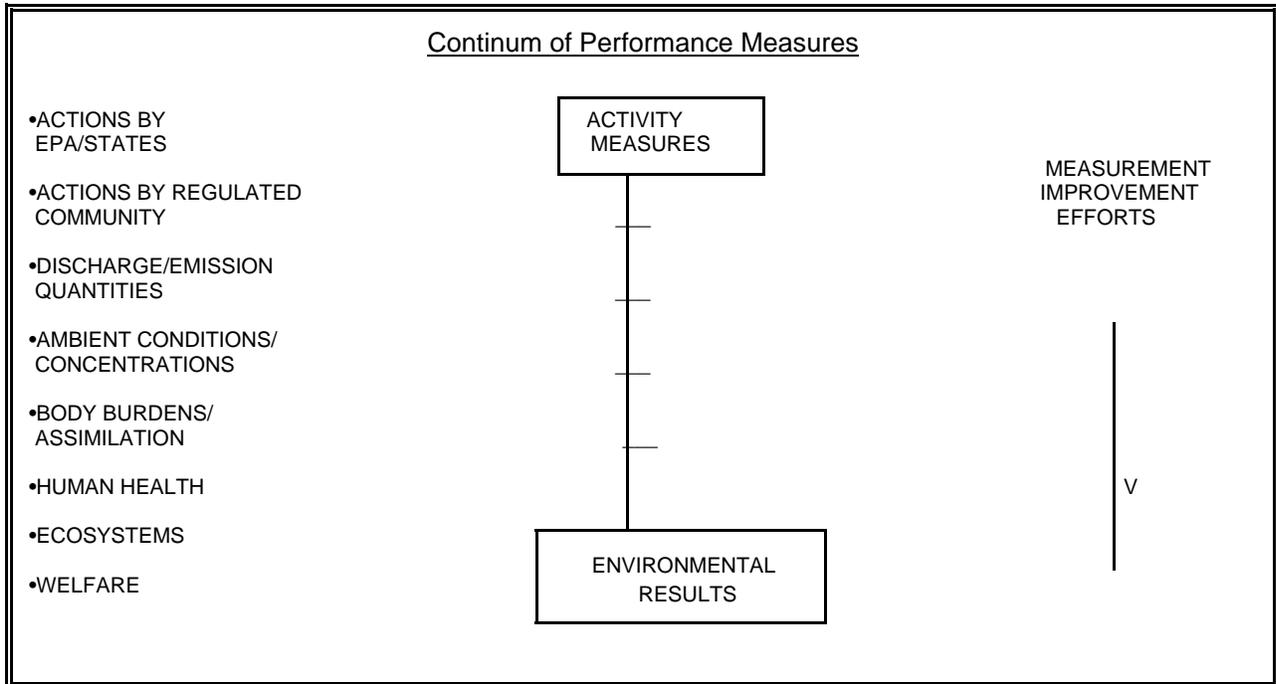
The region has made some significant progress in improving the measures it uses. For example, the entire agency now tracks federal enforcement case conclusions as well as starts, and the region is beginning to count compliance assistance activities. On a national level, EPA is working to develop methods of quantifying actions taken by the regulated community, and changes in emissions or discharges that result from compliance assistance.

Proposed Strategic Enforcement and Compliance Indicators

As part of the Region's organizational change process, a progress indicator is being developed for each of the Region's seven "core processes." The progress indicator currently under consideration for compliance and enforcement is:

> ACHIEVE AND MAINTAIN HIGH RATES OF COMPLIANCE AND A "LEVEL PLAYING FIELD" BY USING A FULL RANGE OF COMPLIANCE ACTIVITIES, INCLUDING TARGETED ENFORCEMENT ACTIONS AND COMPLIANCE ASSISTANCE.

To evaluate whether this progress indicator is being achieved, this strategy proposes some new measurements:

!   **Severity of Violations Measure**, or "**SNC Rate**": of the total number of facilities that received some type of compliance evaluation,[8] the percentage that are designated as SNC (Significant Noncompliers), HPV (High Priority Violators), or SV (Significant Violators).[9]

$$\frac{\text{\# of SNC, HPV, or SV Facilities}}{\text{\# of Facilities that Received Compliance Evaluation}}$$

!   **Compliance Rate**: out of the total number of facilities that received some type of compliance evaluation, the percentage that were in compliance.

$$\frac{\text{\# of Facilities in Compliance}}{\text{\# of Facilities that Received Compliance Evaluation}}$$

!   **Evaluation Rate**: out of the total number of facilities a given universe of regulated entities, the number of facilities that received some type of compliance evaluation.

$$\frac{\text{\# of Facilities that Received Compliance Evaluation}}{\text{\# of Facilities in a Given Universe}}$$

OEC is working with media program offices to develop a regional compliance baseline report using these indicators. This report is scheduled for mid-1997.

The Drinking Water Program section in Appendix V provides an example of how the measures work with real data. It is important to read the accompanying "data caveats summary" to understand the data limitations. The Drinking Water data, for example, are limited in scope to microbiological violations; chemical violations are not reflected.

The Drinking Water Program data analysis is broken out by state, with two pages for each state. The first Alaska page shows a table entitled "Facilities Data," which provides four years of historical data, from federal fiscal year (FY) 1992 through 1995.

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[8]   A compliance evaluation is defined as any sort of check to evaluate whether a facility is in or out of compliance. A compliance evaluation could be an on-site inspection, a desktop review of paperwork submitted by a facility, a computer data scan of contaminant data, etc.

[9]   Some programs do not have SNC, HPV, SV, or an equivalent designation to further characterize violators.

The numbers in the body of this table are counts of the "number of facilities".[10] In 1992, for example, reading from left to right:

!   **102** facilities were determined to be in Significant Noncompliance;

!   **558** facilities were found to be in violation;

!   **681** facilities received compliance evaluations; and

!   the known universe consisted of **681** facilities;

Note that the data columns are "nested." In other words:

!   SNC facilities are a subset of facilities in violation;

!   facilities in violation are a subset of facilities evaluated; and

!   facilities evaluated are a subset of the known universe.

These data are displayed graphically in the chart directly below the table.

        The second page for Alaska also presents data in table form which are illustrated in a chart directly below. The table, entitled "Measures," applies the proposed measures described above to the facilities data in the first table. For example, in FY92:

!   the SNC Rate was calculated by dividing the total number of SNC facilities (102) by the total number of compliance evaluations (681) to yield a SNC Rate of **15%**.

!   the Compliance Rate was calculated by dividing the total number of facilities in violation (558) by the total number of compliance evaluations (681), which yields a violations rate of 82%. The "Compliance Rate," therefore, is 100% minus 82%, or **18%**.

!   The Evaluations Rate was calculated by dividing the total number of facilities that were evaluated (681) by the total universe (681), which for the Drinking Water program is **100%**.

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[10]   Counting facilities is not the way EPA typically measures enforcement activity. Typically, EPA counts individual inspections or enforcement actions. For example, a facility could receive multiple compliance evaluations during a year, and each evaluation would be counted. While this is an entirely valid way of measuring enforcement activity, counting facilities is more amenable to developing compliance rate-type information. Thus, under this approach, a facility that receives multiple compliance evaluations in a given year would be counted as one evaluated facility during that year.

Following the data analysis of the states and tribes, there are charts showing facilities data and measures rates for the region as a whole. Finally, there are two charts that provide a cross-state comparison of facilities and measures using FY95 data.

In general, there are a number of limitations inherent in developing compliance data of this kind, including:

! **Data incompleteness**: Some programs lack historical data for certain years, states, or tribes. However, most programs are able to compile data for the current year and can begin building a baseline.

! **Data unreliability**: Data pulled from program databases are of varying quality, depending on the quality of data entry, whether post-entry "clean up" of existing data has occurred, etc. Some program data may not be of sufficient quality to support this approach.

! **Data inconsistency**: Data may not be comparable across state programs, especially in situations where the states maintain their own unique databases. Also, data collected from states may be of varying reliability and completeness, or may count things differently.

! **Sample bias**: Compliance Rate and SNC Rate measures will be biased to the extent that programs do not randomly select facilities for compliance evaluation. In other words, targeted compliance evaluations would produce a statistically biased sample of evaluated facilities.[11]

! **Lag time**: Lag time between the inspection date and the date of an enforcement action can make interpretation of the data more difficult.

Notwithstanding such limitations, the region believes this approach to looking at compliance rates is a useful tool for many programs because:

! For most programs, this approach may be the closest EPA can get to estimating compliance rates with available data. The agency's goal of maximizing compliance suggests that we should try to measure compliance rates, if EPA can credibly do so, with the resources available.

! The approach can provide useful information about individual state programs. For example, the data can answer questions such as:

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[11] This is not a problem for the PWSS data because their "sample" of evaluated facilities is equal to the universe. Other programs that evaluate only a fraction of their universe could generate an unbiased sample by randomly selecting facilities for compliance evaluation, but this would be inconsistent with the regional support for targeting. EPA guidance recommends that programs conduct a subset of their compliance evaluations on a random basis so that facilities outside targeting schemes retain a risk of being selected for evaluation. Such a random sample, if it were of sufficient size, could be used to calculate less biased compliance rates.

"   do the numbers of SNC, HPV, or SV facilities appear to be increasing or decreasing over time?

"   do the number of compliance evaluations conducted by the program appear to be increasing or decreasing over time?

"   do the number of facilities found to be in violation appear to be increasing or decreasing over time?

"   how does the "evaluation rate" vary over?

"   what is the "compliance rate" of facilities that received compliance evaluations, and how does it vary over time?

"   what is the "SNC Rate" of facilities that received a compliance evaluation, and how does it vary over time?

!   Programs can apply their historical knowledge to the data and look for compliance problems or weak areas, and develop a strategy to improve them. Custom solutions can be developed to address specific problems, using innovative or compliance assistance tools, if appropriate. Programs could evaluate their progress in addressing these problems by continuing to track compliance rate trends in future years.

It is important to recognize that at this time these measures are only proposed ; they have not been adopted by specific programs at this point. Chapters 5 and 6 discuss how these measures should be developed.

3.5 SELECTING THE BEST TOOLS

A typical program may use a range of compliance activities from compliance monitoring and enforcement actions to promoting innovation and pollution prevention. Achieving and maintaining an effective balance among the compliance tools is critical. There is little empirical information to suggest what the best balance might be for any given program. However, this section provides some general guidance for programs to use in selecting an appropriate mix of tools.

As an overall guideline, EPA should work toward investing approximately three-quarters of compliance resources (including those of all EPA's regulatory partners) in traditional enforcement activities such as compliance monitoring, traditional compliance assistance, and enforcement actions. Remaining resources should be devoted to innovative activities such as compliance assistance outreach initiatives, ELP, and other incentives. This overall mix should allow the agency to meet its our statutory responsibilities and have a strong deterrent effect, while making meaningful investments in complementary innovative compliance activities.

There are many forms of compliance assistance, some of which would be considered traditional and others which would be considered innovative. A traditional activity is one that EPA has been doing for years. An innovative activity is one EPA has been doing only relatively recently or have never tried. For example, compliance assistance information offered during the course of everyday business would be considered traditional, while a planned compliance assistance outreach project like Shopsweeps would be considered innovative. Figure B provides a visual representation of how a hypothetical compliance program might look if three-quarters of its resources were invested in traditional activities with the remaining resources invested in innovative activities.

Because each compliance program is unique, the optimum mix of tools is likely to differ from program to program. Each program should decide, in consultation with states and tribes, as appropriate, how resources should be invested. In making resource allocation decisions, the priority is to ensure a strong traditional enforcement presence. OEC encourages programs to invest in innovative activities, but new investments in innovation should not be made if they would compromise the program's ability to have a strong deterrent effect. If a program decides it has sufficient resources to invest in innovative activities, the program should consider the following when deciding how to invest them:

!   identification of opportunities for implementing compliance assistance outreach projects;

!   compatibility of the program with current national policies and initiatives;[12] and

!   program resources and investments of other regulators; and

!   anticipated cost effectiveness.

The mix of tools the region uses is likely to differ from that of other regulators (e.g., the states) because the delegation status and the capabilities of other regulators varies. Regional programs should maintain a dialogue with other regulators to develop a mutual understanding of how each is employing its resources, and communicate to work toward a comprehensive enforcement and compliance mix that strengthens the overall program.

3.6 REINVENTION INITIATIVES

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[12]   Currently, these would include the "Top 12" reinvention initiatives, sectors, and geographic and community-based environmental protection.

The Clinton administration has proposed 25 environmental initiatives as part of the Reinvention of Government theme. Regional 10 has invested in a number of these areas, including:

!   Flexible Funding for States and Tribes (PPGs)

!   Brownfields

!   Sustainable Development Challenge Grants

!   Incentives for Auditing, Disclosure and Correction

!   Compliance Assistance and Incentives for Small Businesses and Communities

!   Risk-Based Enforcement

!   Project XL

!   Environmental Management Systems

!   Permit Improvements

!   Effluent Trading in Watersheds

!   Refocus Drinking Water Program on Highest Risks

!   Public Electronic Access

These reinvention initiatives provide both opportunities and challenges for Region 10 enforcement programs. Some, such as effluent trading in watersheds and permit improvements, are closely connected with traditional approaches. Others may require programs to focus their resources away from traditional enforcement tools and into compliance assistance approaches. Programs should continue to evaluate these initiatives and incorporate them into their program where useful, recognizing that traditional enforcement should remain the principal component of our enforcement mix.

4.0 IMPROVING THE ENFORCEMENT PROCESS

This chapter summarizes ways to improve EPA's internal enforcement process. The following chapter, Chapter 5, outlines some strategic directions for the region based, in part, on these themes.

4.1 TARGETING

The goal of targeting is to maximize our use of enforcement resources. Targeting involves finding more efficient ways of focusing resources to address problems.

Programs need to balance out the value of targeting with the importance of other strategic priorities that may require a more even or random coverage of regulated facilities. For example, random inspection schemes will likely provide better regional analyses of compliance trends. Some program specific guidances may also require using "neutral inspection schemes" in implementing an enforcement program. As with many other aspects of enforcement program management, the challenge here is to find the appropriate mix of approaches.

There are many forms of targeting. This section briefly describes three types of targeting: 1)targeting of communities or geographic areas (this includes targeting for Environmental Justice concerns), 2) targeting of sectors, and 3) targeting in support of multimedia inspections

4.1.1 Community-Based Environmental Protection (CBEP)

Focusing compliance resources on selected geographic areas is one way to target enforcement. The geographic approach involves taking a comprehensive look at all the sources contributing to a priority pollution problem within a particular community or geographic area, and then strategically applying tools, which may include enforcement, compliance assistance, or both, to address the problem. Programs should consider specific efforts in communities of color and low income communities as part of their CBEP efforts.

Through the recently completed reorganization process, Region 10 has made a significant investment in providing environmental assistance to Tribes and Alaskan Native Villages. Emphasis has been placed on addressing environmental matters in low income communities and communities of color. The Tribal Office consists of several EPA staff who support environmental management on Tribal lands by providing guidance on environmental policy, program management, and environmental review. The environmental justice program supports environmental protection in low income communities and communities of color and can provide demographic data to support CBEP efforts.

Through a technical and policy evaluation process developed by the Region 10 Office of Ecosystems and Communities (ECO), the region has selected several Community Based Environmental Protection (CBEP) geographic areas in which to focus grant resources at the local level. The selection process was based on a document entitled "Geographic Priority Setting Criteria." The Region intends to focus resources on geographic areas or communities, working with the affected communities, agencies, industries and other groups, as appropriate, to solve environmental problems. The Region 10 areas selected to receive grant funds in 1996 include:

Willamette River (Oregon)
Puget Sound (Washington)
Mid-Snake River (Idaho)
Lower Yakima River (Washington)
Umatilla (Oregon)
Columbia River Mainstem (Oregon/Washington)
Coeur d'Alene (Idaho, Oregon)
Coastal Oregon (Salmon Initiative)

ECO plans to work with other appropriate Region 10 Offices, including OEC, to help ensure that regional resources are targeted in a coordinated and efficient manner.

4.1.2 **Sectors**

Focusing resources on segments of the regulated community is another important form of targeting. OECA has identified national priority and other significant sectors that warrant special emphasis such as in-depth compliance status analysis or focused application of compliance or enforcement efforts. For FY 96/97, OECA has identified the following "national priority" sectors:

! Petroleum refining

! Nonferrous metals

! Dry cleaning

Regional offices were asked to develop strategies to address these sectors, along with others of regional interest, and to summarize these strategies in the region's biannual MOA with OECA. Within Region 10, EPA or States are currently invested in the following sectors:

! Agriculture (EPA - Region wide)

! Auto Service (Washington, Alaska)

! Mining (EPA - Region wide)

At the request of the Executive Team, a cross-regional sector project team has been formed to assist the region in ensuring an efficient, organized and streamlined approach to sector work. Planned deliverables include recommendations regarding investments to make in the sector approach and a framework for designing a sector-specific strategy or action plan.

4.1.3 Multimedia Inspections

Region 10 has recently reaffirmed its commitment to continuing its multimedia inspection program. However, a number of areas have been identified by OEC as requiring improvement in order for this targeting approach to work more effectively. They include:

! shorten the time line required to finalize reports and provide feedback to facilities;

! adjust the targeting criteria to better identify violating facilities;

! work with states to incorporate a wider range of multimedia activities into annual targets;

! improve the cross-training of compliance and enforcement staff; and

! assign a coordinator to track and expedite post-inspection multimedia enforcement actions.

Ensuring the effectiveness of this program is an important part of the regional targeting mix. Program offices should continue to work with OEC in making these improvements to the multimedia targeting effort.

4.2 **STRATEGIC AND TIMELY ACTIONS**

In the current setting of declining compliance resources and increasingly complicated environmental problems, it is critical that EPA continuously improve the process to maximize the environmental benefit of each action taken. To accomplish this, EPA needs to ensure that:

! the agency maintains strong field presence;

! the agency can clearly articulate its rationale for proceeding with an action;

! actions are timely;

! actions are accompanied by publicity; and

! civil and criminal programs are coordinated effectively.

The following subsections describe how EPA can work to accomplish each of these elements.

4.2.1 **Enforcement Action Rationale**

Before initiating an enforcement action, we need to be able to articulate, in a way that would sound reasonable to someone outside an enforcement program, *why* we are pursuing an enforcement action and what we hope to gain. A variety of guidance documents are available to support this, including program-specific "timely and appropriate" guidance.

Programs should periodically review these case specific rationales as they accumulate over time to look for broader scale messages that EPA Region 10 is delivering to the regulated community, and then use the results of these analyses to make adjustments in their case selection process where needed.

4.2.2 **Timeliness**

Timeliness is an important aspect of EPA's enforcement process; it means doing everything possible to initiate *and resolve* enforcement actions expeditiously. Timeliness builds credibility with the public, the regulated community, and states and other regulators who refer cases to EPA. In situations when an enforcement action serves as notice that a real or potentially unsafe situation needs to be corrected, timeliness is especially critical.

In addition to initiating enforcement soon after discovery of a violation, EPA should place equal emphasis on managing the entire enforcement pipeline so that

cases are resolved as quickly as possible. Successfully resolving a case best fulfills the goals for initiating the case in the first place, which may be to protect or improve human health or the environment, and/or to deter further violations.

After an inspection, EPA should make a concerted effort to inform regulated entities as soon as possible of any violations so that corrective action can be taken.[13] Notification can be done by initiating an enforcement action, or issuing an NOV or other informal notification. Immediate problems should be identified during or immediately after the inspection. EPA should give serious consideration to issuing notices in advance of formal enforcement, especially if it anticipated that initiating enforcement action may not be possible for an extended period of time (i.e., it will occur more than six months after an inspection).

The region anticipates that, in most cases, formal enforcement actions can and will be initiated within three months of discovery of a violation, with six months as an outer limit. In general, the Region expects that formal enforcement action, if appropriate, will be initiated *no later than 6 months* after the *earliest* occurrence of any of the following:

!   completion of an inspection;

!   discovery of a violation; or

!   confirmation of a suspected violation.

This time line also applies following the region's receipt of a complete referral package from a delegated program.

This three to six-month time frame applies to all EPA Region 10 formal enforcement actions, including multimedia actions. To the extent that this time line is more stringent than program-specific policies, ERPs, or PPA language, the six-month limit should control.

Within a week of completing an EPA inspection, the inspector and a program person (assuming they are different people) should meet to discuss whether there is a

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[13]   The Region does not have a duty of early notification of potential violations to any community or facility. In some cases, early notification is not appropriate.

potential case worth pursuing.[14] If the program decides an action is appropriate,[15] an ORC attorney should be immediately assigned and brought into the discussion on how to meet the six-month time frame.

To meet the time frame, EPA will strive to accomplish the following tasks as early in the process as possible:

!	issue information requests

!	complete inspection reports

!	complete program review of reports

!	complete any revisions to reports; and

!	make enforcement decisions.

EPA recognizes that there will be circumstances where the six-month time frame cannot be met. If a formal initial enforcement action (administrative complaint or judicial referral) is not initiated within the six-month time frame, before the six-month time frame elapses, the program should forward a memorandum to its Office Director, the Deputy Regional Administrator, and the Regional Administrator that:

!	explains the reason(s) for the delay

!	describes where schedule slippage occurred;

!	describes steps the program is taking, or plans to take, to minimize further delay;

!	indicates when the program expects to complete the action.

This memorandum need only be a couple of paragraphs in length, and should not exceed one page. A template for this memo is provided in Appendix VIII.

In addition to timeliness, "pipeline management" is another area where EPA is committed to making improvements. Aspects of this include:

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[14] If a compliance determination is dependent on sampling results, then the meeting should occur within a week of when those results are available.

[15] It should be noted that inspections are often not sufficiently comprehensive to determine whether a violation has occurred. Additional information may be needed to determine compliance status. All additional necessary information should be gathered and evaluated within the six-month time frame.

!   planning for the mix of cases at various stages of the enforcement process, such as case initiation, referrals, negotiations, and consent order/agreement monitoring;

!   case workload management of regional enforcement staff; and

!   identification and correction of "roadblocks" in the system that prevent or delay case initiations and conclusions.

Unit managers in the enforcement programs should work with their staffs to develop sound management practices in each of these areas. OEC will be providing assistance by developing a "pipeline management" system that will help programs perform the tracking part of this work.

Executive Team level involvement will be important to ensure the continuity of these efforts at timeliness and pipeline management. On a quarterly basis, Office Directors should update the Deputy Regional Administrator and Regional Administrator on the status of all enforcement actions in their office with regard to timeliness. The update should consist of a list for each enforcement program in the Office. Each list should provide the name of all relevant cases in the office, along with the "start date," action initiation date, and case conclusion date for each case. (See Section 6.0 - Next Steps - for more information).

4.3 **EFFECTIVE PUBLICITY**

Effectively communicating EPA's compliance and enforcement activities to the public and the regulated community is important because it maximizes the deterrent and educational effect of these actions, and helps the public understand the value of the agency's enforcement programs. Effective publicity is especially important for enforcement because deterrence depends on the regulated community's awareness of our enforcement actions.

Currently, publicity about compliance activities is not implemented consistently across programs. The Region 10 Office of Environmental Cleanup (ECL) has developed a publicity policy that has been effective and is readily transferable to other offices. The policy consists of the following:

!   In general, enforcement actions going to an Office Director for signature should include either a press release or a brief "Communications Strategy" (generally just a few paragraphs in length) that explains why a press release is not necessary.

!   Before sending out an NOV, EPA should always think through what the external consequences might be, and how the agency can best respond.

All Region 10 programs should implement a comparable policy for all enforcement actions. The Outreach Unit in the Office of Ecosystems and Communities is available to assist program staff to implement it.

4.4 **COORDINATION OF CIVIL AND CRIMINAL PROGRAMS**

Civil and criminal enforcement activities are complementary components of the Region's overall compliance effort. These programs should work together and support each other to increase the agency's overall effectiveness. Program staff support of criminal case development is an important Regional investment and should continue.

Each potential case should be examined against the full array of enforcement authorities to ensure the best use of investments and tools. Programs should bring any cases that may warrant criminal action to the attention of the Criminal Investigation Division (CID) and CID should inform the programs as to investigations that should be handled through the civil process. The civil programs and CID should meet periodically to review and appropriately assign new cases, and determine whether any ongoing civil cases should be switched over to the criminal program or vice versa.

5.0 STRATEGIC DIRECTIONS

This strategy has presented a baseline of regional operations, core operating principles, and enforcement and compliance measures of success. Based on this information, the following strategic directions have been identified. These directions should be incorporated into our PPA discussions with the states as well as program-specific plans. They will also be used as the basis of future agreements between the region and headquarters.

Strengthening the Core Enforcement Process.   A review of the baseline data indicates that compliance and enforcement resources have been generally decreasing over the past few years. Traditional enforcement activities now represent a smaller part of the overall compliance tool matrix; and, therefore, the challenge of how to use them to ensure an adequate enforcement presence have become greater. The following are critical to success in this area:

! Sufficient Inspection Presence -- EPA should cover the universe to a degree that builds and maintains deterrence. EPA should work with the states during the PPA process to define success and then cooperatively determine EPA and state roles in inspection coverage. Inspection coverage must also be sufficient to allow EPA and the states to accurately assess changes in compliance over time.

! Timely Enforcement -- EPA actions should be timely. EPA should initiate specific mechanisms for improving the timeliness of its actions. This strategy has proposed a three to six-month time line for initiating enforcement actions. Programs may want to consider and provide justification for alternate targets in developing program-specific plans.

! Coordinated civil and criminal programs -- EPA should work to ensure that cases are periodically screened or evaluated so that the most appropriate program addresses the violation.

! EPA should periodically self-evaluate how it is conducting enforcement and compliance work.

Information and Data Improvements This involves using and integrating data more effectively to improve:

! resource focusing,

! targeting,

! management of the enforcement pipeline, and

! provide the public access to non-sensitive compliance and enforcement information.

The region should build on the variety of efforts at multimedia data integration. Specifically, the region should develop a compliance and enforcement data base that:

! Integrates compliance information from current media data bases and from programs that do not yet have national data bases (CERTS is Region 10's current approach to this task, but it needs to be modified to allow for non-national data base integration).

! Consolidates facility-specific information to allow the region to move to a system which used common identification and descriptive information for each facility.

! Includes a planing and tracking component to help programs and ORC plan and manage caseloads (the region's goal for such a planing and tracking system is late 1997).

Strengthen Relationships   In general, EPA should work together with its partners to more effectively coordinate compliance efforts, recognizing that neither EPA nor the states can do everything on its own.

! EPA should work to strengthen EPA/state relations through the PPA process by developing PPA agreements for FY 98 and FY 99 that reflect the Operating Principles identified in Chapter 3.

! Regional staff can also use the sector approaches developed for mining (and under development for agriculture) to support this strategic direction. A critical part of these approaches involves cooperative efforts with other state and federal agencies. This is a resource-intensive effort. Program managers should work to ensure that staff involved in interagency efforts that are part of these and other sectors have adequate time for these workgroups, and include this work in performance agreements.

! Implementation of the regional CBEP Strategy will also play a major role in strengthening relationships.

Mainstream Worthy New Initiatives and Innovative Approaches   EPA should proceed with incorporating innovative ideas that we know to be successful into everyday compliance work. EPA should look for opportunities to transfer successful ideas to similar situations. For example, the agency could work to facilitate the transfer

of an innovative compliance assistance initiative that was successful in one state to another state with similar compliance needs. Examples of innovative approaches include:

!   reinvention initiatives;

!   "beyond compliance" and compliance assistance efforts; and

!   pilot projects

EPA should continue to identify promising new ideas and promote their implementation on a trial basis to evaluate their effectiveness and transferability. The region should consider working with NW states to establish an Innovative Compliance Forum specifically for this purpose.

6.0 NEXT STEPS

This compliance strategy lays out some general principles and concepts for Regional compliance programs, and attempts to address some complicated and dynamic issues. Not only is the general subject matter complex, interrelated, and constantly changing, but the relationships involved (within a program, among the programs, and between the various levels of government) are also complicated and overlapping. OEC believes that this strategy, by providing guidance on issues such as targeting, compliance philosophy, and the enforcement mix, helps clarify for EPA and others how the agency carries out its enforcement and compliance responsibilities. Programs can use this strategy as a tool for shaping discussions with states during future rounds of PPA negotiations.

The Strategy identifies several discrete tasks that should be completed soon:

Process Improvements (Including Timeliness)

1. Programs and ORC should determine how they will coordinate their efforts to meet the six-month time frame for initiating enforcement actions.

2. Each Office should establish a tracking system to enable its Office Director to report statistics on timeliness of enforcement actions to the Regional Administrator on a quarterly basis and on an "exceptions" basis to identify cases which have or will exceed the timeliness goal.

3. Regional management should on a quarterly basis review progress toward end-of-year projections on key outputs (inspections and enforcement) as well as look at the number of "open cases," e.g., "what's in the pipeline."

Strategic Planning:

4. The larger regional programs (air, RCRA, and water) are strongly encouraged to develop program-specific compliance strategies that incorporate the concepts of this strategy. These program-specific strategies will be useful for the purpose of planning and discussion; they would not be "approvable" documents. Other compliance programs should consider program-specific strategies as well. Development and completion of these strategies should be timed to feed into the PPA negotiations process.

   An outline for the program-specific strategies is provided in Appendix X. (Some programs have already developed some strategy information that fits directly into the outline.)

Incorporate Resources Survey

5.	When the OEA State of the Environment Report is issued in summer, 1997, programs should revise their program-specific strategies or prepare a stand-alone strategy document, as appropriate, to address environmental or human health problems identified in the report that could be addressed by their program.

6.	The region should ensure that this strategy is integrated with the headquarters MOA process, as well as regional efforts in community based environmental protection, and tribal strategies.

Targeted Enforcement:

7.	Programs should evaluate their programs to ensure that they are strategically targeting their resources to promote compliance in priority areas, such as geographic areas, environmental justice areas of concern, and sectors (once they are selected), high priority violators, etc.