



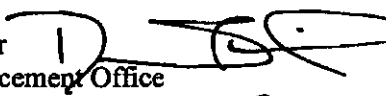
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460


DEC 28 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Providing EMS-Related Compliance Assistance During
Federal Facility Inspections

FROM: David J. Kling, Director 
Federal Facilities Enforcement Office

Michael M. Stahl, Director 
Office of Compliance

TO: Addressees

This memorandum transmits recommended practices for Providing EMS-Related Compliance Assistance During Federal Facility Inspections. These recommendations were prepared in consultation with staff from the Compliance Assessment and Media Programs Division within OECA's Office of Compliance as well as EPA regional Federal Facility Program Managers. Please note that this document supports the June 25, 2003, OECA national policy document on The Role of the EPA Inspector in Providing Compliance Assistance During Inspections and does not change the existing practice of providing appropriate compliance assistance during inspections.

These recommendations are intended to promote the development, implementation and maintenance of Environmental Management Systems (EMS) at federal facilities and support federal facility compliance with Executive Order 13148, Greening the Government Through Leadership in Environmental Management. EPA actively promotes the development of EMSs and has issued a statement of support from the EPA Administrator encouraging their development and use among the regulated community. EMSs can also improve environmental compliance and reduce environmental impairment if properly implemented. Therefore, we are asking inspectors to provide a brochure to facility management during the conduct of a federal facility inspection to promote EMSs. The brochure provides basic information on EMSs and provides a list of contacts in the regions and other resources for facility management and staff. OECA will post these recommendations and the EMS brochure on the EPA Inspector Website

(Intranet) and at FedCenter the Federal Facility Environmental Stewardship and Compliance Assistance Center (www.fedcenter.gov).

Please distribute this document widely throughout the organization to all EPA employees and contractors who conduct federal facility inspections. If you have any questions, please call the Federal Facility Enforcement Office at 202- 564-2510.

Attachments: Providing EMS-Related Compliance Assistance During Federal Facility Inspections - Policy for EPA Staff during Federal Facility Inspections

Addressees: Regional Federal Facilities Senior Managers
Regional Enforcement Division Directors, Regions 1-10
Regional Media Division Directors, Regions 1-10
Regional Enforcement Coordinators, Regions 1-10
Lisa Lund, Deputy Director, Office of Compliance
OC Division Directors
Walker Smith, Director, Office of Civil Enforcement
Randolph Hill, Deputy Director, Office of Civil Enforcement
OCE Division Directors
Peter Murtha, Director, Office of Criminal Forensics and Training
OCEFT Division Directors
Caroline Peti, Director, Office of Planning, Policy Analysis and Communications
Diana Love, Director, National Enforcement Investigations Center

cc: Kenneth Gigliello, OECA/OC
Phyllis E. Flaherty, OECA/OC
Julie Tankersley, OECA/OC
Sandra Connors, OECA/FFEO
Greg Snyder, OECA/FFEO
Bernadette Rappold, OECA/FFEO
Richard Satterfield, OECA/FFEO
Mike Shields, OECA/FFEO
Will Garvey, OECA/FFEO
Regional Federal Facilities Program Managers
FFEO Liaisons

Providing EMS-Related Compliance Assistance During Federal Facility Inspections

Recommended Practices for EPA Staff During Federal Facility Inspections

Introduction:

The purpose of this document is to request that EPA inspectors provide Environmental Management System (EMS) information as compliance assistance during inspections by primarily providing previously-prepared EMS information (e.g., EPA-designed brochure) to federal facility managers. As part of the Federal Facility Enforcement Offices's (FFEO) continuing commitment to champion the use of EMSs in the federal sector, EPA's Office of Enforcement and Compliance Assurance (OECA) is proposing to use federal facility inspections as opportunities to further educate federal facilities regarding the benefits of EMS implementation. By offering EMS information and other resources as compliance assistance, EPA can help raise awareness of EMSs and emphasize the relationship between EMS performance and compliance with environmental requirements.

Although this document is mainly intended as a set of recommended practices for inspectors, it may also be applicable to other EPA staff members who participate with inspectors during federal facility inspections (e.g., Federal Facility Program Managers). FFEO acknowledges that the main purpose of EPA conducting compliance inspections is to determine compliance with environmental regulations and enforcement agreements. If properly designed and implemented, EMSs should allow regulated facilities to participate in some of their own compliance monitoring which can help resolve problems before they result in either significant non-compliance or environmental impairment. A well designed, implemented and maintained EMS normally can help an organization fulfill its regulatory responsibilities and improve overall environmental stewardship. Likewise, an EMS that is poorly designed, improperly implemented or allowed to become insignificant may lead to situations of complacency where non-compliance is not discovered or is potentially neglected by facility personnel.

Presidential Executive Order 13148 (signed by President Clinton on April 21, 2000), *Greening the Government Through Leadership in Environmental Management*, requires federal agencies to implement EMSs at appropriate facilities by December 2005. The Order also sets requirements to ensure compliance with environmental laws. In doing so, it requires federal agencies to integrate environmental accountability into the day-to-day decision-making and long-term planning processes across all federal agency missions, activities and functions. It also promotes improved environmental stewardship and better management of federal agency environmental programs. Because of this unique requirement for the federal community, EPA believes that inspections present a timely and appropriate opportunity for facility managers to learn more about EMSs and their relationship to compliance.

FFEO has begun posting information on FedCenter.gov², listing various resources for federal facility personnel who seek to 1) increase their knowledge of EMSs and 2) understand and strengthen the relationship between any identified compliance deficiency brought to their attention during the inspection, and the compliance and corrective action elements of their EMS. Specific recommendations for EPA inspectors to follow during the on-site federal facility inspection include:

- Provide an informational brochure that explains: 1) how facility management can improve compliance by preparing, implementing and maintaining an EMS; 2) the requirements of Executive Order 13148, and; 3) where facility staff can find information and resources regarding EMSs. Copies of the brochure, will be made available on the EPA Inspector Website (Intranet), as well as FedCenter. Copies may also be obtained from the Regional Federal Facility Program Manager.
- Share information about, or provide a review of the compliance status of the federal facility, including a preliminary evaluation of some, but possibly not all, of the potential violations observed during the closing conference. Often during this process, facility management's attention is focused on the facility's internal corrective action process and facility staff are open to suggestions for returning to compliance, and preventing recidivism.
- Consider the appropriate time during the compliance inspection to provide EMS information. This decision is best determined by EPA regional staff during the inspection.
- Avoid providing site-specific interpretive assistance, consulting or becoming involved in trouble-shooting existing EMSs. Information exchange should primarily consist of transferring previously-prepared information and resources to federal facility personnel.
- Document and report any compliance assistance activities provided during the inspection on the EPA Inspection Conclusion Data Sheets (ICDS). Please refer to the OECA Memorandum *Fiscal Year 2005 Inspection Conclusion Data Sheet (ICDS) Expansion, Implementation and Reporting*, dated September 10, 2004. Specifically, FFEO is requesting that the EPA inspectors indicate on the ICDS (e.g., in the optional information section) that EMS was the type of compliance assistance provided during the inspection.
- Contact the Federal Facilities Program Manager (FFPM) in the relevant region for information about EMSs or to request their assistance with the inspection. The FFPMs can provide more specific guidance to facility management and to inspectors who are unfamiliar with the concept of an EMS and the Executive Order.

²

FedCenter.gov is a web-based information resource providing comprehensive environmental stewardship and compliance assistance information focused solely on the needs of federal government facilities. The site can be reached at <http://www.fedcenter.gov>

- Avoid making statements to the facility staff that suggest that they are exempt from enforcement actions if facility personnel develop, improve or audit the their own EMS.

NOTE: EPA compliance inspectors are encouraged but not *required* to provide compliance assistance. FFEO acknowledges that offering EMS information as compliance assistance may not be feasible or appropriate depending on factors such as the time allowed for a particular inspection, site-specific conditions (e.g., significant problems that rise to the level of imminent and substantial endangerment to human health and the environment), and the attitude of facility management.

EMS Training for Inspectors

A variety of EMS training is available to EPA inspectors and other federal agency staff at EPA's EMS website located at <http://www.epa.gov/ems/resources/guides.htm> . Most recently, EPA developed an overview of an EMS that describes how EMSs can support environmental improvements at facilities that are subject to environmental regulations (<http://www.epa.gov/epaoswer/ems/ems-101/ems101.htm>). Additional EMS materials are posted at the EMS program area on FedCenter.

Questions regarding this policy, the EMS Brochure, EMS training for federal facility personnel should be directed to Richard Satterfield of the Federal Facility Enforcement Office at (202) 564-2456.

(Intranet) and at FedCenter the Federal Facility Environmental Stewardship and Compliance Assistance Center (www.fedcenter.gov).

Please distribute this document widely throughout the organization to all EPA employees and contractors who conduct federal facility inspections. If you have any questions, please call the Federal Facility Enforcement Office at 202- 564-2510.

Attachments: Providing EMS-Related Compliance Assistance During Federal Facility Inspections - Policy for EPA Staff during Federal Facility Inspections

Addressees: Regional Federal Facilities Senior Managers
Regional Enforcement Division Directors, Regions 1-10
Regional Media Division Directors, Regions 1-10
Regional Enforcement Coordinators, Regions 1-10
Lisa Lund, Deputy Director, Office of Compliance
OC Division Directors
Walker Smith, Director, Office of Civil Enforcement
Randolph Hill, Deputy Director, Office of Civil Enforcement
OCE Division Directors
Peter Murtha, Director, Office of Criminal Forensics and Training
OCEFT Division Directors
Caroline Peti, Director, Office of Planning, Policy Analysis and Communications
Diana Love, Director, National Enforcement Investigations Center

cc: Kenneth Gigliello, OECA/OC
Phyllis E. Flaherty, OECA/OC
Julie Tankersley, OECA/OC
Sandra Connors, OECA/FFEO
Greg Snyder, OECA/FFEO
Bernadette Rappold, OECA/FFEO
Richard Satterfield, OECA/FFEO
Mike Shields, OECA/FFEO
Will Garvey, OECA/FFEO
Regional Federal Facilities Program Managers
FFEO Liaisons