



Final FY2006 Update

National Program Managers'  
Guidance

Office of Enforcement and  
Compliance Assurance

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<b>SECTION I: INTRODUCTION</b> .....	2
<b>SECTION II.</b>	
<b>NATIONAL PRIORITIES FOR ENFORCEMENT AND COMPLIANCE</b>	
<b>ASSURANCE</b> .....	4
Wet Weather .....	5
Air Toxics - Maximum Achievable Control Technology (MACT) .....	5
NSR/PSD .....	6
Mineral Processing .....	7
Tribal .....	8
Petroleum Refineries .....	8
<b>SECTION III: CORE PROGRAM ACTIVITIES</b> .....	
Compliance Assistance .....	9
Compliance Incentives .....	11
Monitoring and Enforcement .....	12
Technical Support and Training .....	14
Data Quality and Reporting .....	15
EPA State Relations .....	16
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and RCRA Corrective Action Enforcement Program .....	19
CLEAN WATER ACT (CWA) PROGRAMS .....	20
SAFE DRINKING WATER ACT (SDWA) PROGRAM .....	28
FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT PROGRAM ..	35
EPCRA PROGRAMS .....	38
TSCA .....	40
CLEAN AIR ACT PROGRAM .....	46
RCRA PROGRAM .....	55
FEDERAL ACTIVITIES PROGRAM .....	63
FEDERAL FACILITIES ENFORCEMENT AND COMPLIANCE PROGRAM .....	65
MULTIMEDIA AND RAPID RESPONSE PROGRAM .....	70
ENVIRONMENTAL JUSTICE PROGRAM .....	73
TRIBAL PROGRAM .....	77
<b>SECTION V. FY2006 OECA Workplan Submission Instructions</b> .....	80

## **Executive Summary**

Office of Enforcement and Compliance Assurance (OECA) - FY 2006 Update to the National Program Managers' Guidance.

### **SECTION I: INTRODUCTION**

EPA's national enforcement and compliance assurance program is characterized by its multi-media scope and breadth. The national program is responsible for maximizing compliance with 10 distinct federal environmental statutes dealing with prevention and control of air pollution, water pollution, hazardous waste, toxic substances, and pesticides. Most of these statutes have multiple program elements, and OECA carries out compliance and enforcement activities in a total of 28 separate program areas. The statutory and regulatory requirements of these programs apply to approximately 41 million regulated entities, an enormous and diverse universe which needs to achieve and maintain compliance.

The OECA National Program Manager's (NPM) guidance sets forth national program priorities and activities for the enforcement and compliance regulatory programs for a three year cycle. The performance expectations and activities outlined in the guidance are the starting point from which headquarters and the regional offices engage to discuss the management of program activities and the distribution of resources. These discussions result in the regions committing to a specific number of, or a specific universe percentage of, program activities. These commitments nationally constitute the agreed upon approach between the regions and the national program managers for achieving performance expectations in both the core program and the national priorities for the fiscal year.

#### **FY 2006 Update to the FY2005 - 2007 NPM Guidance**

The FY2005 - 2007 NPM guidance issued in April 2004 incorporated changes and recommendations adopted by the Agency to improve the planning process as a whole and to continue to integrate program planning with performance-based results. Additionally, the development and issuance of the NPM guidance was timed to engage the states earlier and more directly to allow them a greater role in EPA's planning and priority setting processes.

One of the most significant changes to the FY 2005 - 2007 planning process was the introduction of the Annual Commitment System (ACS). The ACS replaced the paper memorandum of agreement (MOAs) that OECA had previously required from each of the ten regions. Starting in FY2005, the regions entered their annual program commitments into the ACS. Regions were required to enter commitments for both the core and national priority areas. Headquarters and the regions negotiated and finalized acceptable commitment levels prior to the start of FY2005.

For FY2006, OECA has eliminated a number of the commitments in the ACS. After

completing the commitment process for 2005, OECA senior managers established a workgroup to review the existing commitments and make recommendations for reducing the number of commitments in the system. The purpose for this was twofold. The first was to reduce the overall number of commitments to alleviate the reporting burden on the regions. The second was to respond to the regions' feedback that a number of the commitments needed clarification, better definitions, clearer delineation between federal and state responsibility, or were duplicative of other media programs' commitments. The workgroup, composed of regional and headquarters staff, reviewed all of OECA's ACS commitments. A set of principles was developed to provide the group with a consistent rationale and framework for deciding which commitments should be deleted, which commitments should be reworked or redefined, and which commitments should remain unchanged. For those commitments recommended for deletion, the workgroup made sure to maintain the commitment's program activities and expectations as part of the narrative in this FY2006 Update to the NPM Guidance. Further, the deletion of a commitment doesn't mean the corresponding data is no longer reported into OECA's national data systems. Regions should continue to rely on OECA's Enforcement and Compliance Reporting Plan Memorandum which defines reporting requirements for the national program. The workgroup recommended that the number of commitments be reduced from 168 to 105. Additionally, the workgroup recommended that the commitments tracking both state and federal activities be broken out to clarify tracking within the ACS. Therefore, in some instances there will be two commitments for one activity. Overall, there is a decrease of 67 core and priority commitments and the addition of four new commitments for FY2006.

It is important to note that not all core program activities have an associated commitment in the ACS. The absence of a commitment in the ACS does not tacitly imply that a core programs' activities are any less important. Likewise, the activities in the ACS should not be focused on exclusively at the expense of other program activities. The commitments in the ACS are a subset of the full array of OECA's core program. The national enforcement and compliance assurance program is a dynamic program and regions should expect that headquarters may need to redirect attention and resources toward program issues that arise during any given fiscal year. It is possible that an issue may develop well after the planning for the fiscal year has been completed. Headquarter's acknowledges that there are regional considerations that dictate the extent to which a region can address newly identified initiatives or program requests but there is an expectation that the regions adjust resources and participate accordingly whenever practicable. The introduction of the ACS does not change this dynamic and a midyear ACS adjustment period has been built into the planning cycle so that regions may make any necessary adjustments to their commitments should their resources be directed elsewhere during the course of the year.

Lastly, the financial assurance priority has been added to the FY2006 planning cycle and a development and implementation strategy will be developed. Last year OECA recommended that this issue be evaluated during FY2005 to determine whether it should be pursued as a priority beginning in FY2006. After consulting with our program partners and others, OECA has decided to pursue this priority for FY2006 -FY2007. A more detailed explanation on the priority's selection rationale and OECA's approach to for addressing this priority area can be found in Section II - National Priorities for Enforcement and Compliance Assurance below.

## **SECTION II.**

### **NATIONAL PRIORITIES FOR ENFORCEMENT AND COMPLIANCE ASSURANCE**

OECA selected its national priorities for the FY2005 - FY2007 planning cycle at the beginning of last year. Strategy implementation plans have been developed for all of the priorities and activities are fully underway to meet the priorities' goals. Below are short summaries of the priority topic areas. For more information on the priorities, priority-specific goals, and the national priority selection process go to <http://epa.gov/compliance/data/planning/priorities/index.html>

#### **Financial Responsibility**

**Selection Rationale:** Financial responsibility protects public health and the environment by promoting the proper and safe handling of hazardous materials and protecting against a liable party defaulting on closure or clean up obligations. These benefits are lost unless there is **compliance** with the financial responsibility requirements and **enforcement** where there is a failure to maintain sufficient financial responsibility. Absent financial assurance, protection of human health and the environment would depend on available governmental financial resources. Consistent with EPA's mandate to protect human health and the environment and ensure compliance with the law, as well as the Agency's long standing "polluter pays" principle, an enforcement strategy for obtaining full compliance with financial responsibility requirements prevents improper handling of hazardous materials and the shifting of the costs from the responsible parties to state and federal taxpayers.

Recent events have revealed that there are significant issues related to compliance with the financial responsibility obligations under current environmental laws. OECA is concerned that entities not providing adequate financial responsibility in accordance with their obligations under federal laws are not providing adequate protection to human health and the environment. OECA's concerns in this area are shared by the Association of State Territorial Solid Waste Management Organizations (ASTSWMO) who urged OECA to adopt financial responsibility as an FY2006-2007 enforcement priority.

EPA has decided to phase in its approach in the examination of compliance and enforcement issues under the federal laws. OECA has initiated its review by looking at the Resource Conservation and Recovery Act (RCRA) Subtitle C closure/post-closure and corrective action and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). OECA plans to initiate its review of Section 6(e) under the Toxics Substance and Control Act (TSCA) in FY2006. Also in FY2006, OECA plans to evaluate the Safe Drinking Water Act (SDWA) and RCRA Subtitle I to determine if the financial responsibility programs under these laws should be included in this priority. This phased approach will help OECA refine its efforts to address identified non-compliance and resource issues as well as help in the development of a strategy with measurable goals and outputs for all environmental laws

requiring financial responsibility in this priority.

**Performance-Based Strategy Goal:** By FY2007, reduce harm to human health and the environment by addressing noncompliance and optimize EPA's financial protection and resources. EPA is currently developing procedures and measures to carry out this goal by creating a screening process to assess risks caused by a failure to have financial responsibility so that high-risk entities are identified on a priority basis and ensuring that all inspected entities are in compliance or on a path to compliance.

### **Wet Weather**

**Selection Rationale** - Discharges from wet weather events are the leading causes of water quality impairment as documented in Clean Water Act (CWA) Section 305(b) reports and represent significant threats to public health and the environment. The discharges come from overflows from combined sewers or sanitary sewers, concentrated animal feeding operations (CAFO) discharges and run off, and storm water run off. The main pollutants in sewer overflows are fecal coliform (raw sewage), bacteria, pathogens, nutrients, untreated industrial wastes, toxic pollutants such as oil and pesticides, and debris washed into the sewer system. Discharges of nitrogen, phosphorous and fecal coliform from CAFOs to water bodies can occur through poor maintenance of waste lagoons, improper storage of animal waste, excessive and improper application of manure to crops, and excessive rainfall resulting in spills and leaks of manure management areas. Storm water runoff can carry high levels of pollutants such as sediment, oil and grease, suspended solids, nutrients, heavy metals, pathogens, toxins, and trash into sewer systems and ultimately into our streams, rivers, lakes, estuaries, wetlands, and oceans. Pollutants in sewer overflows, storm water discharges and CAFO's can cause a variety of diseases in humans, ranging from dysentery to hepatitis. Wet weather compliance problems have been prioritized by looking at regulated facilities contributing to the impairment of watersheds, beaches and other recreational areas, shellfish beds, source water protection areas, environmental justice areas, and other sensitive areas.

**Performance-Based Strategy Wet Weather Goal:** Protect public health and water quality in our nation's watersheds where CSO's, SSO's, CAFO's, and Stormwater sources may adversely impact sensitive areas, environmental justice communities, or have the potential to cause other significant risks to the environment or human health.

### **Air Toxics - Maximum Achievable Control Technology (MACT)**

**Selection Rationale:** MACT standards are promulgated under Section 112 of the CAA to regulate the most hazardous air pollutants (HAPs) and those posing the highest degree of risk to human health and the environment. By ensuring compliance with MACT standards, the Agency reduces public exposure to toxic air emissions. By the end of 2004, EPA will have promulgated approximately 90 MACT standards. After MACT standards are established, the regulated community has several years before the compliance date takes effect to learn about and prepare for the new standards. Emphasis on MACT standards over several years, both before and after

the compliance dates, can ensure that the requirements are clearly understood and that guidance and compliance assistance tools are developed for regulatory agencies and the regulated community.

The Air Toxics program first became an OECA priority in FY2000. Since that time, the objective of the priority has been to distribute the substantial MACT implementation workload between headquarters and the regions through a regional Adopt-a-MACT program. Through the program, the regions adopted MACT standards for which they developed compliance monitoring and compliance assistance tools. This approach has resulted in the availability of a wide array of MACT implementation tools such as inspector check lists, applicability flowcharts and compliance time lines. Now that compliance dates are in place for more than 40 MACT standards, and implementation tools are available for the majority of these standards, the focus of the Air Toxics priority will shift from primarily a compliance assistance and tool development effort to compliance monitoring and enforcement.

**Performance-Based Strategy Goal:** The general goal of this strategy will be to protect public health and the environment from the release of harmful emissions of air toxic pollutants. An important component of meeting this general goal will be to implement the Performance-Based Air Toxics Enforcement Strategy; key provisions will include:

- Identification and addressing of high risk pollutants of concern;
- Focus on major Maximum Achievable Control Technology (“MACT”) sources while maintaining regional flexibility to target all MACT source categories for investigation, including area sources;
- Consideration of Environmental Justice (EJ) in targeting MACT source investigations;
- Utilization and further development of targeting tools which identify and prioritize high risk sources of concern and substantive areas of noncompliance with MACT standards;
- Identification of data gaps and ways to gather such data;
- Coordination of enforcement efforts with states and tribes as appropriate.

The primary goal of the Air Toxics Enforcement Strategy will be to:

Achieve an annual projected reduction of approximately 12,000 pounds of air emissions regulated by the MACT standards during the priority period through the investigation and enforcement of strategically chosen MACT standards. Such air emissions, which include known carcinogens, mutagens, teratogens, etc., are the most toxic air pollutants regulated under the Clean Air Act. Over the FY2005-2007 period, approximately 36,000 pounds of air emissions regulated by the MACT standards will be reduced from these MACT sources. Sources identified as violating the emission requirements of applicable MACT standards will be placed on federally enforceable compliance schedules, or will have had appropriate enforcement action taken, to reduce their excess emissions to zero, in accordance with EPA’s enforcement response policy.

#### NSR/PSD

Pursuant to a memo dated Oct. 13, 2005, from EPA Deputy Administrator Marcus Peacock, the Office of Enforcement and Compliance Assurance is revising its NSR/PSD Strategy to account for new Agency rule-makings affecting coal-fired power plants. While OECA will continue to pursue filed cases and cases in active negotiation against coal-fired power plants, OECA will shift its future focus in the NSR/PSD Strategy from coal-fired power plants to other sectors where compliance assurance activities have the potential to produce significant environmental benefits. It is expected that strategy revisions will be completed by the end of 2005.

**Selection Rationale** - New Source Review (NSR) requirements in the CAA are intended to ensure that the construction of new sources or modification of existing sources does not jeopardize the attainment of National Ambient Air Quality Standards (NAAQS) in non-attainment areas. Prevention of Significant Deterioration (PSD) requirements ensure that areas with relatively clean air are not significantly degraded by the influx of new air pollution sources. The NSR and PSD programs directly control emissions of criteria air pollutants, and the PSD program requires sources to address a number of toxic air pollutants. Avoidance of the required review results in inadequate control of emissions, thereby contributing thousands of unaccounted tons of pollution each year, particularly of NO<sub>x</sub>, VOC, SO<sub>2</sub> and PM<sub>10</sub>. These emissions worsen problems in non-attainment areas and threaten to drive attainment areas into non-attainment. Investigations conducted by EPA at many coal-fired utility companies, refineries, and other industrial facilities reveal that many of them made modifications that were subject to NSR or PSD but failed to obtain the required permits or install necessary controls.

While EPA will vigorously pursue the new rules through the courts, compliance with current NSR provisions remains our objective and we will continue to use enforcement to meet that objective. We will pursue all filed cases and decisions to bring new cases will be guided by several factors including available resources and desired environmental benefits. NSR is an important tool and one component of our comprehensive national strategy to achieve cleaner air.

#### **Performance-Based Strategy Goal:**

Through the NSR/PSD priority, EPA will protect human health and the environment by investigating the compliance status of companies representing 75% of the nation's coal-fired power generating capacity by 2007. The companies found to be in noncompliance will be subject to an enforceable order by the end of FY2007. Such orders will ultimately result in the reduction in air emissions of 700 million pounds. Further, EPA will identify additional sectors where significant environmental benefit can be derived from the resolution of NSR/PSD noncompliance by the end of FY2007.

#### **Mineral Processing**

**Selection Rationale:** The mishandling of mineral processing wastes has caused significant environmental damage and resulted in costly cleanups. These highly acidic wastes have caused fish kills and the arsenic and cadmium that these wastes often contain have been found in



mineral processing facilities are failing to obtain the necessary permits and adequately manage their wastes.

Mining produces significant amounts of waste and byproducts, ranging from 10% to more than 99.99% of the total material mined. Wastes include overburden and waste rock, which are primarily disposed of in piles near the mine site. Waste rock dumps are generally constructed on unlined terrain, with underlying soils stripped, graded, or compacted depending on engineering considerations. Tailings contain a mixture of impurities, trace metals, and residue of chemicals used in the beneficiation process. Specific types of environmental impacts include: acid mine drainage, acid leaching operations, fugitive dust emissions, erosion and sedimentation, habitat modification, disruption of surface and groundwater, and mining subsidence, the creation of sinkholes or troughs as a result of collapsing overlying strata into mined out voids. These sinkholes interrupt surface water drainage, affecting ponds and streams.

### **Performance-Based Strategy Goal:**

By FY2007, ensure that high-risk facilities in the mineral processing and mining sectors are in compliance or on a path to compliance, or are otherwise working to reduce risk to human health and the environment through measures such as the implementation of best management practices. This goal will be achieved through the following activities:

- Prioritize mineral processing and mining facilities by evaluating risk and other factors, such as proximity to environmental justice areas, financial viability and compliance status. Select 25 non-phosphoric acid mineral processing facilities and five mining sites for investigation.
- Ensure that all 18 phosphoric acid facilities are in compliance or are addressed through settlement, civil action or referral to the Department of Justice (DOJ) and are subject to an order to assess a substantial hazard and address any imminent and substantial endangerment.
- Ensure that 25 of the mineral processing facilities (other than phosphoric acid ones) are in compliance or, if not in compliance, have been addressed through settlement, civil action or referral to DOJ for filing and are subject to an order to assess a substantial hazard and address any imminent and substantial endangerment.
- At five mining facilities, assess compliance, evaluate whether there is a potential imminent and substantial endangerment, and take appropriate action to protect human health and the environment.
- Identify waste management practices that cause health and environmental problems and work closely with local, state, tribal and federal authorities to provide that information to other regulated entities so that they can improve their environmental management practices.
- Aggregate information on “marquee” compliance problems—those that occur throughout an industry—and best management practices and disseminate it to the regulated community and all state and private providers of assistance.

## **Tribal**

**Selection Rationale:** Significant human health and environmental problems, associated with several media programs, are present in Indian country and other tribal areas. There are currently 562 federally-recognized Indian tribes in the United States responsible for almost 77 million acres of land in Indian country. The tribal priority will focus on a variety of environmental issues and will also address adjacent noncomplying facilities impacting Indian country and other tribal areas, including those in Alaska.

**Performance-Based Strategy Goal:** The primary goal of the tribal strategy is to significantly improve human health and the environment in Indian country and other tribal areas through EPA working with tribes on compliance assistance, compliance monitoring and enforcement activities. Through building tribal capacity and direct implementation, EPA will initially focus national attention on three areas: drinking water, schools and waste management. If at the time a Region commits to focus on one of these areas there are no violations to address, the Regions should commit to address targeted violations as they arise.

## **Petroleum Refineries**

Petroleum Refining, a current national priority, will be evaluated at the end of FY2005 for potential return to the Core Program.

**Selection Rationale:** The Petroleum Refining Sector was selected as a national priority in FY 1996. An integrated national strategy was developed that built upon individual regional investigative efforts in this sector in the early 1990s, and sought to assemble and focus regional, headquarters and state refinery expertise in a National effort to engage this industry, on a company-wide basis, in resolving the most environmentally significant, crosscutting air pollution violations at their facilities.

Through this effort, EPA initiated scores of investigations at refineries and embarked on a series of multi-facility negotiations with major refining companies. At this time, global settlements have been reached with refiners representing approximately 40 percent of the domestic petroleum refining capacity. Subsequent to FY2002, the emphasis in the petroleum refining strategy shifted to completing the investigation and settlement work that was in progress. Beyond concluding negotiations with those facilities we have already engaged, the regions will have a continuing resource commitment to implementing federal consent decrees. Ultimately, EPA must assure that the states have sufficient capacity to both investigate and return to compliance, refiners that have not been the subject of federal enforcement, and to secure the benefits of the federal settlements through permitting, once the settlements have expired.

### **Performance-Based Strategy Goals:**

**Goal 1:** Through settlement or filed civil action, address 80 percent of the domestic refining capacity and 90 percent of the domestic refining capacity in environmental justice

areas.

- Goal 2:** From the 1995 baseline, 50 percent improvement in compliance.
- Goal 3:** Reduce SO<sub>2</sub> and NO<sub>x</sub> emissions by 20 percent.
- Goal 4:** Respond to all consent decree deliverables requiring a response, 75 percent of those responses within 90 days of receiving the deliverable.

### **SECTION III: CORE PROGRAM ACTIVITIES**

Core activities are conducted to implement required elements of environmental laws and to maintain a credible presence to deter noncompliance. This section begins with a discussion of those aspects of national guidance which apply across all core program areas, then provides a discussion about individual program elements under various environmental statutes.

The performance expectations and required regional commitments defined in this core guidance represent national program expectations and do not cover all of the enforcement and compliance assurance efforts conducted in the regional offices. Flexibility is a key component of the national enforcement and compliance assurance program planning process and there is the understanding that, while regions are expected to support national program core and priority activities, there are very real, credible reasons for a region's nonparticipation. There are many factors that can influence the level of a region's participation. For example, geographic or sector initiatives, the presence/absence of a regulated sector in a region, regional resources, and high priority regional initiatives can all directly impact the regions' contributions to national core and priority activities. To ascertain the full array of a region's activities for a given fiscal year, the region's response to the core program guidance must be considered along with their Regional Plan. In particular, the regional plans provide more information on the region's use of compliance assistance and compliance incentive tools to achieve results. A region's performance is based on the effective use of all the enforcement and compliance assistance tools and program activities. The core guidance activities laid out below, in conjunction with the regional plans, provide the best context for a region's contribution to the national program and to program activities in areas unique to the region. To access the regional plans, go to <http://www.epa.gov/ocfo/regionplans/regionplans2.htm>

#### **GUIDANCE APPLIED TO ALL CORE PROGRAMS**

Ensuring compliance involves the use of all available tools including compliance assistance, compliance incentives, compliance monitoring, and civil and criminal enforcement that are appropriate to address specific environmental risks and noncompliance patterns. In using these tools in the national program there are certain fundamental activities and requirements that need to be carried out for all core program areas.

##### **A. Compliance Assistance (*Sub-objective 5.1.1*)**

Compliance Assistance includes activities, tools or technical assistance that provides clear and consistent information for: 1) helping the regulated community understand and meet its obligations under environmental regulations; and 2) helping other compliance assistance providers to aid the regulated community in complying with environmental regulations. Assistance may also help the regulated community find cost-effective ways to comply with regulations and go beyond compliance through the use of pollution prevention techniques, improved environmental management practices, and innovative technologies, thus improving environmental performance.

The compliance assistance core program in the regions should include the following:

1. A strong regional compliance assistance core program infrastructure:
  - A full-time regional compliance assistance coordinator to provide a focal point for planning and coordination of compliance assistance efforts;
  - Communication networks within the region, across regions, with headquarters, states, tribes, and external environmental assistance providers;
  - Mechanisms to coordinate and strategically build compliance assistance into national, regional and state planning processes.
  
2. Strategic planning for up front consideration and appropriate use of compliance assistance in addressing environmental problems:
  - Plan and coordinate compliance assistance across organizational and programmatic boundaries (e.g., media programs, enforcement, environmental justice, small business) and include states, tribes, and other stakeholders in this process;
  - Use integrated strategic approaches to target and address environmental problems, and consider all available tools, such as compliance assistance, compliance incentives (self-audits, opportunities for pollution prevention and Environmental Management Systems (EMS)), compliance monitoring, and enforcement (See November 27, 2002, Framework for a Problem-Based Approach to Integrated Strategies).
  - Ensure appropriate use of compliance assistance in the implementation of integrated and performance-based strategies for both national and regional priorities.
  
3. Tracking and measuring results of compliance assistance activities:
  - Report on planned and actual compliance assistance projects in the Integrated Compliance Information System (ICIS)
  - Report all compliance assistance project outputs, and for significant compliance assistance projects, also measure and report outcomes. Significant compliance assistance projects include activities that support the OECA national priorities or regional priorities.
  - **Commitment ASST01:** Conduct outcome measurement for 100% of all compliance assistance workshops/training, onsite visits and revisits which support the OECA national priorities and report the results of these outcomes into ICIS. Report on exceptions to the 100% and provide brief explanations in the ACS.

- Conduct follow-up measurement activities to determine improved environmental management practices and pollution reduction outcomes achieved for the subset of direct assistance activities identified above which are in support of the OECA national priorities.
  - Outcomes of federal compliance assistance on-site visits and revisits should be reported in ICIS. The Compliance Assistance Conclusion Data Sheet (CACDS) can be used to record these outcomes and facilitate data entry into ICIS.
4. Providing compliance assistance targeted to appropriate problems, sectors, and geographic areas directly or through other providers (states, tribes, P2 providers, etc.)
- Develop compliance assistance tools, conduct training, workshops, presentations, onsite visits and/or distribute outreach materials;
  - Share compliance assistance tools and opportunities within the regions and externally, e.g., with states, tribes, trade associations;
  - Serve as a wholesaler of compliance assistance to enable other providers to offer assistance, including, for example, providing training and tools to providers;
  - Place new tools on Compliance Assistance Clearinghouse as they are developed;
  - Market and wholesale compliance assistance opportunities and tools, and share success stories.

Detailed descriptions of the above compliance assistance activities undertaken by the regions, as well as information on the types of sectors targeted for compliance assistance, can be found in the regional plans at <http://www.epa.gov/ocfo/regionplans/regionplans2.htm>

#### **B. Compliance Incentives (*Sub-objective 5.1.2*)**

EPA promotes compliance through the use of incentive policies. These policies reduce or waive penalties under certain conditions for facilities which voluntarily discover, promptly disclose, and correct environmental problems. EPA encourages the use of such policies, which include the Audit Policy, various market-based incentives, compliance auditing protocols, and environmental management systems that will result in actions that reduce, treat, or eliminate pollution or improve facility environmental management practices (EMPs).

EPA's Audit Policy, Small Business Policy and Small Community Policy provide incentives for the regulated community to resolve environmental problems and come into compliance with federal laws through self-assessment, disclosure, and correction of violations. Under various Compliance Incentive Programs (CIPs), individual entities or members of a sector can disclose and correct violations in exchange for reduced or waived penalties, while the risk of enforcement increases for those not taking advantage of this opportunity. EPA also promotes the disclosure of environmental information in accordance with the SEC's mandatory corporate disclosure requirements as a means of promoting improved environmental performance. Increasing public access to corporate environmental information helps maintain a level playing field for companies, and raises company awareness concerning environmental issues.

Regions are expected to carry out at least the following activities associated with compliance incentives:

- participate in compliance incentive programs directed at a particular sector and/or noncompliance problem, with emphasis on violations that, once corrected, are likely to result in measurable pollution reductions.
- promote OECA's compliance incentive policies (e.g., small business policy, audit policy), with the assistance of state, tribal, and local agencies, to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response.
- consider and follow-up on, as appropriate, self-disclosures submitted under the OECA audit policy and small business policy.

### **C. Monitoring and Enforcement (*Sub-objective 5.1.3*)**

#### **Compliance Monitoring**

All regional programs should conduct appropriate compliance monitoring activities, which include conducting compliance inspections and investigations, record reviews, targeting, and responding to citizen complaints. As in the past, NEIC will continue to support ongoing projects to the extent commitments were made in previous years, including case preparation and enforcement support.

The core compliance monitoring program is defined by a number of specific activities. Compliance monitoring comprises all the activities conducted by a regulatory agency to determine whether an individual facility or a group of facilities (geographical, by sector or by corporate structure) are in compliance with environmental laws and regulations, as well as established settlement agreements (e.g., Administrative Orders, Consent Decrees, Criminal Plea Informations). Compliance determinations are generally documented and filed using various methods (e.g., database, inspection report). Compliance monitoring activities occur before and at the point when either compliance or an actual violation is determined.

Examples of important compliance monitoring activities include:

- creating a viable field presence and deterrent by conducting compliance inspections, surveillance, and civil investigations in all the environmental media (air, water, waste, toxics, wetlands, etc.) in both delegated and non-delegated programs;
- performing compliance data collection, analysis, evaluation, and management;
- developing compliance monitoring strategies that include targeting and information gathering techniques;
- collecting and analyzing environmental samples at specific facilities, sites, and ambient locations;

- reviewing and evaluating self-reported data and records, environmental permits, and other technical information relating to compliance with environmental laws and regulations;
- maintaining compliance files and managing compliance records;
- responding to tips, complaints, and referrals from private citizens, other governmental entities, and non-governmental organizations;
- providing training to fulfill the requirements of EPA Order 3500.1, and other applicable Orders (1440.1, 1440.2, etc.);
- preparing reports and inputting compliance findings and inspection results into national databases;
- reporting manually, or into ICIS, the outcomes of inspections and evaluations using the Inspection Conclusion Data Sheet (ICDS) and analyzing and evaluating the outcomes of compliance monitoring activities;
- working with state, tribal, and local environmental regulatory agencies to monitor environmental compliance with environmental laws by private, state, federal, and tribal facilities;
- identifying, tracking, and coordinating with state, tribal, and local environmental agencies those violators that are, or should be designated as, Significant Noncompliers, High Priority Violators, or Watch List facilities;
- identifying potential environmental crimes through the civil compliance monitoring program, and referring and/or assisting in bringing environmental criminals to justice;
- developing compliance monitoring tools such as inspection guides, checklists, or manuals;
- promoting the recommendations detailed in the Office of Compliance (OC) guidance, *Final National Policy, Role of the Inspector in Providing Compliance Assistance During Inspections, June 25, 2003*;
- developing, negotiating, or overseeing state or tribal compliance and enforcement grants;
- providing training, assistance, support and oversight of state and tribal compliance inspectors;
- issuing and tracking federal credentials to state and tribal compliance inspectors;
- performing compliance screens for various headquarters and/or state programs such as Performance Track;
- Conducting federal oversight inspections/evaluations to corroborate state or tribal inspection findings. Oversight inspections/evaluations are a principal means of evaluating both the quality of an inspection program and inspector training (Revised Policy Framework for State/EPA Enforcement Agreements, August 25, 1986).

It is expected that the regions, for each of their programs, will conduct many of these activities in any fiscal year. The specific combination of activities will depend upon the availability of intra- and extramural resources, and working agreements made between state and tribal governments.

Compliance monitoring does NOT include: 1) preparation of Notice of Violations (NOVs), warning letters, and administrative or judicial complaints, and 2) development of evidence and other information where a violation has already been determined to have occurred. Instead, these activities fall under the civil and criminal enforcement programs.

## Civil and Criminal Enforcement

EPA's national enforcement and compliance assurance program utilizes several types of enforcement actions to correct and deter noncompliance. Civil enforcement authorities include administrative and judicial actions. In situations where violations are knowingly and willfully committed, EPA uses criminal enforcement actions. The criminal enforcement core program seeks to effectively integrate criminal enforcement with the regional enforcement programs. To achieve this purpose, each region will continue to coordinate and cooperate closely with the Special Agent-in-Charge (SAC) of the region's CID Area Offices. This includes, but is not limited to, the identification, investigation and prosecution of criminal violations of federal environmental laws, with a particular emphasis on identifying criminal activity which victimizes environmental justice communities. In using its civil and criminal enforcement authorities EPA regions are responsible for:

- adhering to the applicable program enforcement response policies (ERPs), the timely and appropriate (T&A) guidances (where these exist), applicable penalty policies, the Supplemental Environmental Project Policy, and implementation of the Watch List project;
- adhering to OECA Nationally Significant Issues (NSI) and delegations guidance in all cases as applicable;
- tracking compliance with consent decrees and administrative orders, and taking all necessary actions to ensure continued compliance;
- inputting all required data into the national databases, where applicable, and completing and entering the case conclusion data sheets (CCDS) for all concluded actions, including those in the CERCLA program, into ICIS;
- continuing to resolve enforcement cases initiated prior to FY2006 and ensure investigation and issuance of appropriate action for any open tips/complaints/referrals received by EPA;
- working with the Department of Justice and EPA Headquarters as appropriate to complete outstanding judicial and administrative actions;
- continuing and completing appropriate case development activities including issuing information requests, conducting site visits, and developing appropriate remedies.
- identifying leads appropriate for criminal investigations based upon the criteria in the January 12, 1994, Memorandum on the Exercise of Investigative Discretion;
- submitting appropriate leads – including cases or aspects of cases that were initially developed for administrative or civil enforcement but later reveal potential criminal wrongdoing – to the regional screening committee where discussions and decisions will be made as to whether violations will be pursued administratively, civilly, or criminally;
- providing technical support to CID investigations, provide regional personnel as witnesses when necessary, and maintain legal staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crimes; and
- ensuring that all environmental measurements or samples used to support EPA criminal investigations will be gathered, recorded and analyzed in a manner that complies with the EPA quality assurance system, and that all evidence collected will be handled and kept secure in accordance with EPA policies for the custodial management of evidence.



## **D. Technical Support and Training**

Technical assistance and training is available to assist regions, states, tribes and local governments in expanding and improving their capacity to conduct enforcement and compliance assurance activities. Both the National Enforcement Investigations Center (NEIC) and the National Environmental Training Institute (NETI) are available to provide expertise and training in both the core and priority program areas of OECA.

**NEIC** - The civil and criminal enforcement programs will continue to draw upon the scientific and technical expertise of the NEIC in conducting its compliance monitoring and enforcement activities in both the national priority and core program areas. NEIC will continue to direct its new activities toward national priorities and regional initiatives as described in this guidance, and the regional plans. NEIC project selection will also be guided by the Assistant Administrator's priorities, the Agency's Strategic Plan, Government Performance and Results Act (GPRA), and the national goals effort. Furthermore, NEIC will be examining requests for assistance based upon the potential for producing measurable environmental results and the degree to which activities provide opportunity to use or enhance NEIC's unique capabilities (e.g., multi-disciplined teams, in-depth process evaluations, complex analytical procedures, etc.).

**NETI** - As a result of its recent organization into the Office of Compliance, a NETI Transition Task Force has been convened to implement a series of recommendations to assess emerging training needs, strengthen NETI's role as a clearinghouse for training information within the enforcement and compliance assurance program, explore cost effective means of delivering distance training, and prepare a strategic training plan that parallels OECA's annual planning process. NETI's primary role as developer, coordinator, publisher, and trainer for federal, state, local and tribal attorneys, inspectors, civil and criminal investigators and technical experts in all phases of environmental enforcement is still paramount. Closer integration of a training strategic plan with OECA's planning process will improve the ability of NETI to plan, develop, and deliver training that will assist EPA and its state and tribal partners in successfully achieving the environmental goals of OECA's national priorities. NETI is also beginning the process of developing performance measures with the goal of quantifying the performance results of enforcement training.

## **E. Data Quality and Reporting**

OECA continues to strive to improve the quality of the enforcement and compliance data to assure this information can be used as a tool to manage the program and to reliably report on our accomplishments. This effort to improve and attain a high level of confidence in our information is focused on two areas: data quality and reporting.

Each OECA office and region should have an approved Quality Management Plan establishing the offices' procedures for ensuring the sound collection and use of enforcement and environmental data. In addition, the Data Quality Strategy of March 25, 2002 outlines an

approach to systematically identify and address problems with the enforcement and compliance data. Part of this Strategy is to conduct projects (e.g., the enforcement action audit) that will require regional, state, and tribal involvement.

On May 6, 2003, OECA issued a memorandum addressing data integrity (“Ensuring Integrity of Reported Enforcement and Compliance Data”) and established stringent procedures for reporting federal data including:

- quarterly data quality reviews of enforcement and compliance data,
- timely entry of data (i.e., two weeks after activity occurs),
- mid-year and end-of-year certification by Senior Managers of data completeness and accuracy,
- distribution of monthly ICIS manager reports, and
- developing an ICIS Data Integrity Guidance.

OECA will issue an annual Enforcement and Compliance Reporting Process memo by the end of March each fiscal year that will provide that year’s reporting requirements, GPRA measures, schedules/deadlines, contacts, etc. This memo is a comprehensive guide to the annual enforcement and compliance reporting requirements covering the various enforcement and compliance program tools (e.g., compliance assistance, compliance monitoring, compliance incentives, enforcement) and all media program areas (e.g., CAA, CWA, FIFRA, TSCA, CERCLA). The memorandum will identify all reporting requirements for national priority areas and core program on a fiscal year basis.

All federal enforcement cases must be entered into ICIS, the database of record, and also entered in the associated legacy system, if one exists. Applicable CCDS information on all concluded actions must also be entered into ICIS and, beginning in FY2005, applicable CACDS data should be entered into ICIS. The legacy systems (e.g., AFS, PCS, RCRAInfo) are the data base of record for inspections, violations, significant violators (SNCs)/high priority violators (HPVs); however many regions are also entering their inspections into ICIS. A large percentage of federal inspections are reported manually because there is no corresponding program database. OECA is striving to have all of the manually reported federal inspections (e.g., UST, SPCC, wetlands), entered into ICIS during this planning cycle and will provide separate guidance on this through the annual Enforcement and Compliance Reporting Process memorandum.

## **F. EPA State Relations**

Consistent with the process for developing national program guidances, regional plans and state performance agreements, it is critical to have effective ongoing consultation and communication between EPA and states. Regions and states should ensure that established processes and procedures for notification of inspections and enforcement actions in authorized and non-authorized programs, pursuant to the “no surprises” policy, are in place and may be included in work plans for Performance Partnership Agreements, Performance Partnership Grants (PPAs/PPGs) or categorical grant agreements. The work plans may be tailored to specific state conditions and levels of performance. In negotiating grant work plans, regions and states should

consult the National Program Guidance and follow EPA grant regulations, i.e., 40 CFR Parts 31 and 35. OECA guidance and policy, such as the 1986 “Revised Policy Framework for State/EPA Enforcement Agreements” and its subsequent addenda, should continue to guide regional discussions with states.

### State Review Framework (SRF)

OECA has worked closely with EPA regions, the Environmental Council of States (ECOS), state media associations and other state representatives to jointly develop a framework and process for conducting reviews of core enforcement programs in the CWA-NPDES, RCRA Subtitle C and the CAA Stationary Sources programs. The goals of the Reviews are to promote consistent levels of activity in state and regional enforcement programs, consistent oversight of state and regional enforcement programs, and consistent levels of environmental protection across the country, which should help ensure a level playing field for states as they try to attract business. In FY2004, 10 pilots were conducted of the Framework. In 2005, the pilots will be evaluated to identify opportunities to improve the Framework and streamline the review process. In July of 2005, the regions are scheduled to begin reviews in the remaining states and territories, with the goal of completing all reviews by the end of FY2007.

The elements, criteria and protocols of the Review Framework are consistent with the 1986 “Revised Policy Framework for State/EPA Enforcement Agreements” and the media-specific enforcement response policies, compliance monitoring strategies and penalty policies. These reviews will be an integral part of regional oversight of state enforcement programs in the three media programs, and are appropriate to include in negotiated authorization MOAs. It is envisioned that the three programs to be covered by the reviews will be incorporated into existing program review activities, be the primary tool for determining adequacy in the core enforcement program, and will not constitute new reporting. These reviews should be an integral part of the regional/state planning process and should be captured in appropriate negotiated PPAs, PPGs or categorical grant agreements between the region and the state. Any corrective actions or follow up commitments on the part of the state or the region should be captured and tracked in these grant agreements and those parties held accountable for carrying out those commitments. Regions with multiple year PPAs, PPGs or categorical grant agreements that are already in place should plan to include the SRF process as part of program review activities by the end of FY2007.

Regions should actively discuss these reviews and the schedules for carrying them out with their states on an ongoing basis. Regions should ensure that their staff as well as state managers and staff are aware of and informed about the Framework and the process for conducting the reviews. The capability to use OTIS management reports for national data that will support the reviews is being developed and will become available to the regions and states in phases in FY2006. The regions should encourage states to periodically look at the data, ensure its accuracy and use it in managing their programs.

A performance-based strategy is being developed to guide the implementation of the SRF. The goals (as they currently exist) are stated above. Measures associated with the SRF will

include the number of reviews completed within a Fiscal Year (compared to the number of states and territories under the region's jurisdiction); and the number of program improvements completed as a result of the review. In the future, OECA will look to determine the value of the program improvements through the measurement of various outcomes.

### Grants Management

OECA awards a number of assistance agreements to states, tribes, and non-profit organizations to conduct a variety of activities, particularly in the areas of data management and performance measurement, many of which are managed by the regions. OECA wants to emphasize that effective grants management is a high priority for the Agency. The primary Agency guidance for managing assistance agreements is EPA Order 5700.6, which became effective January 1, 2005. The Order streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and grant management. The order encompasses both the administrative and programmatic aspects of the Agency's financial assistance programs. It requires that EPA develop and carry out a post-award monitoring plan, and conduct basic monitoring for every award. In January 2004, a new Grants Policy Issuance, GPI 04-02, Interim Policy on Environmental Results Under EPA Assistance Agreements, came out of the Office of Grants and Disbarment (OGD). This policy instructs EPA to describe the goal level link to the Agency's Strategic Plan for each grant awarded after February 9, 2004. OGD developed a new EPA Order that requires EPA and grant recipients to discuss the environmental results of grants in grant work plans. This Order became effective on November 30, 2004. Regional offices will need to consider these new and upcoming policies when preparing assistance agreements with states.

### Innovative Programs

Innovative programs continue to be important to the compliance and enforcement program. Regions and states are encouraged to consider implementation of innovative projects for the 2005-2006 planning cycle. EPA's Innovation Action Council (IAC) has endorsed three priority innovations for "scale-up," (i.e., full scale implementation) and recommended their integration into OECA's NPM Guidance. These priority innovations are: the National Performance Track Program, Environmental Management Systems (EMS), and the Environmental Results Program (ERP). Details on these innovations are available at <http://www.epa.gov/innovations>. Regions, states, and tribes are encouraged to use these innovative approaches in the achievement of their program goals. One of the Agency-wide programs which OECA is working closely with the Office of Policy, Economics, and Innovations is the National Environmental Performance Track Program (Performance Track). When participating in Performance Track, regions should be aware of two relevant guidance memos: "Enforcement and Compliance Operating Principles for the National Performance Track Program," January 19, 2001, and "National Environmental Performance Track Program," April 23, 2003. In support of Performance Track, the regions and states (in concert with headquarters offices and DOJ) are expected to conduct comprehensive compliance screens of all applicant facilities. The regional effort includes searches of Agency databases, follow-up on information found, program by program inquiries about new information not yet accessible in databases, and coordination with state partners to the extent possible. The region will assess the

findings against the Performance Track entry criteria, and make recommendations as to the appropriateness of each facility's participation. One of the incentives offered through Performance Track is the Agency's commitment to consider all participating facilities as "low priority for routine inspections." Regions should incorporate these commitments in inspection targeting efforts, both in the context of regional targeting and planning agreements with OECA and to the extent possible in negotiating with state partners in their performance agreements and work plans.

On March 22, 2005, EPA published a proposal to exempt five categories of area sources from the Title V operating permit program. Although these sources would be exempt from the Title V program requirements, they would continue to be responsible for complying with the underlying regulatory requirements established in the applicable National Emission Standards for Hazardous Air Pollutants. If the exemption is adopted, state/local agencies may want to supplement their traditional compliance monitoring activities for these source categories with an oversight program such as the ERP to improve compliance with the underlying regulatory requirements. It combines the following three elements to improve compliance: (1) an annual facility-specific, self-certification questionnaire; (2) compliance assistance to educate and train affected facilities; and (3) a performance measurement method to track and validate facility performance. To learn more about the ERP approach, visit the EPA website at [www.epa.gov/permits/](http://www.epa.gov/permits/).

#### **G. Planning for Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and RCRA Corrective Action Enforcement Program Commitments**

Regions are reminded that Superfund enforcement and RCRA Corrective Action are covered under the new Strategic Plan's Goal 3. It is important to make sure that the Superfund and RCRA Corrective Action program commitments for Goal 3 are addressed. National program direction for Superfund activities are developed and conveyed through the Superfund Comprehensive Accomplishment Planning (SCAP) process. RCRA Corrective Action is addressed through the Office of Solid Waste's (OSW) NPM Guidance.

The commitments for Superfund are to maximize Potentially Responsible Party (PRP) participation at Superfund sites by leveraging PRP resources and recovering costs. These commitments are included in OECA's portion of the on-line commitment system. The regions report the data in CERCLIS and certify it through OECA's annual certification process. The commitments for RCRA Corrective Action are to address the two RCRA environmental indicators (EIs), which measure human exposures under control and migration of contaminated groundwater under control. Regions are encouraged to use enforcement authorities and tools where appropriate to address EI's and final clean-up. In addition, the Superfund and RCRA Corrective Action program commitments for the new financial assurance priority are included in OECA's portion of the on-line commitment system and accomplishments are reported manually.

## **NATIONAL PROGRAM CORE REQUIREMENTS**

### **2. CLEAN WATER ACT (CWA) PROGRAMS**

The Water Program encompasses five (5) separate programs under the Clean Water Act (CWA). These programs are:

- National Pollutant Discharge Elimination System (NPDES) Program
- Pretreatment Program
- Biosolids/Sludge Program
- CWA Section 404 (Wetlands) Program
- CWA Section 311 (Spill Prevention Control and Countermeasures (SPCC) Program

Each program has different characteristics (e.g., some programs have national data bases and some do not), and, as a result, the “core program” varies somewhat from program to program. Therefore, in order to provide clarity, shared core program elements are listed in the following section, followed by a description of compliance and enforcement activities unique to each water program. Regions should also refer to information contained in Section IV: Core Program Activities, for further details on shared core program elements. Regional NPDES programs are responsible for referencing the 1989 Enforcement Management System (EMS) guidance in PPAs and PPGs, and thereby ensuring that states are implementing adequate core program requirements.

**The following core program elements are shared by all of the CWA programs and should be implemented by regions and states:**

- Follow guidance provided in existing national compliance and enforcement policy and guidance, e.g., the 1989 *National Enforcement Management System (EMS)*;
- Consider all available data in implementing the compliance and enforcement activities described below;
- Maintain an effective inspection program in each of the five water program areas;
- Focus assistance, incentives, monitoring and enforcement actions in the national priority areas described in Section II while maintaining a viable presence in all water programs; priority water areas include watersheds, public drinking water intakes or designated protection areas, waters that could impact shellfish beds, waters with threatened or endangered species, waters designated as primary contact recreation, and waters located in environmental justice areas;
- Evaluate all violations, determine an appropriate response, and take timely and appropriate actions against facilities in significant noncompliance (SNC), especially those causing facilities to be on the Watch List according to the EMS;

### **COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)**

Compliance assistance is an appropriate tool, in particular, when there are new rules, sector specific compliance problems, and sectors with a preponderance of small business. Regions should refer to the Compliance Assistance activities description in Section III. A - Core Program Activities.

## **COMPLIANCE INCENTIVES (Sub-Objective 5.1.3)**

Regions should refer to the Compliance Incentives activities description in Section III. B - Core Program Activities.

## **MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)**

### **Compliance Monitoring**

#### NPDES Program

##### Performance Expectations

#### ***Majors Inspection Coverage***

The Agency goal is to annually provide inspection ability for 100% coverage by EPA and states of all major NPDES facilities or equivalent coverage of a combination of major and priority minor facilities annually. The goal of 100% applies to the combined efforts of both EPA and delegated state programs. The regulations found at 40 CFR 123.26(e)(5) indicates: “State NPDES compliance evaluation programs shall have procedures and ability for . . . inspecting the facilities of all major dischargers at least annually.”

If inspection coverage is not expected to be provided for 100% of all major NPDES facilities on an annual basis, the regions must provide an explanation that should include the following:

- Information on how the compliance monitoring water resources will be redirected (e.g., national priority facilities, priority watersheds or facilities discharging to impaired waters such as fish advisories, shellfish bed or beach closures, drinking water sources), and
- How majors will otherwise be monitored (e.g., file and discharge monitoring report (DMR) reviews, Watch List).

This information will be discussed during mid-year and end-of-year discussions between OECA and the regions at national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

Since inspections at a major facility generally require more resources than an inspection at a minor facility, inspection tradeoffs - the number of minor facilities substituted for major facilities - should generally be at a 2:1 or greater ratio.<sup>1</sup>

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<sup>1</sup>This ratio is based on previous work load models that averaged the amount of resources needed to conduct major and minor inspections. All minors inspections that are traded-off for majors MUST be put into PCS/ICIS in order for the region/state to get “credit” for them.

- **Commitment CWA01:** Project by state the number of federal inspections at NPDES major facilities.
- **Commitment CWA01.s:** Project by state the number of state inspections at NPDES major facilities.

**Note:** Policy options are under development for other approaches to guide the use of NPDES inspection resources. The regions and states will be requested to fully participate in these discussions.

### ***Oversight Inspections***

Regions should conduct a sufficient number of oversight inspections to ensure the integrity of each state's compliance monitoring program. The definition of oversight is taken from the *August 1986 Revised Policy Framework for State/EPA Enforcement Agreements and the FY 1987 Guidance for Oversight of NPDES Programs*. The policy says: "Oversight inspections are a principal means of evaluating both the quality of an inspection program and inspector training." The documents also clarify that oversight inspections can be conducted in two ways: 1) by accompanying state inspectors during inspections, or 2) by conducting a separate inspection at the same facility at a later date to verify the same findings. The regions have flexibility to determine the appropriate number of oversight inspections needed to ensure that state inspections are being properly conducted and documented. The documents also clarify that oversight inspections are **not** "joint" inspections.

- **Commitment CWA03:** Project by state the number of federal oversight inspections to be conducted.

### ***Biosolids/Sludge***

Regions planning to conduct additional sludge inspections instead of other CWA core activities should develop a rationale for their investment in this program and they should report these inspections into the Permit Compliance System (PCS). One rationale for doing biosolids inspections is to support the pre-treatment program. Metals and other elements in biosolids can be an indicator of pretreatment problems. OECA will review the number of biosolids inspections conducted by the regions at mid-year and end-of-year as part of the enforcement and compliance reporting process.

### ***Pretreatment Program***

#### Performance Expectations

Where EPA is the control authority, regions should annually inspect 80% of the approved pretreatment programs. Audits should be conducted at least once every five years. In addition, regions should evaluate each Significant Industrial User (SIU) file (e.g., review the DMR and periodic compliance reports) and conduct investigations at 100% of the SIUs that have serious



violations identified in their periodic reports (e.g., effluent 20% over the pretreatment limit), or where the region has information suggesting the SIU discharge may adversely impact POTW operation, effluent quality, or receiving body water quality.

Investigations were defined by the EPA/State Enforcement and Compliance Data Standards workgroup as: “an extraordinary, detailed assessment of a regulated entity's compliance status which requires significantly more time to complete than a typical compliance inspection (i.e., several weeks, as compared to one or a few days)”. Here is the link to the enforcement and compliance data standard workgroup: <http://www.epa.gov/edr/fenfcompbr.pdf>

- **Commitment CWA05:** Project by state the number of federal and state inspections of POTWs with an approved pretreatment program in both approved and unapproved states.
- **Commitment CWA06:** Regions will conduct field investigations at 100% of the SIUs with violations identified in their periodic reports.

There is some concern there is no consistent method to define the universe of SIUs that require investigations. OECA will work with the regions and the Office of Water (OW) to define the universe since it has been flagged as a program deficiency by OW.

**Note:** Policy options are under development for other approaches to guide the use of NPDES inspection resources. The regions and states will be requested to fully participate in these discussions.

#### ***Section 404 (Wetlands)***

Regions should have a process for identifying, targeting, inspecting, and otherwise responding to illegal activities. Regions are expected to implement the timely and appropriate (T&A) policy. Since only two states have been delegated parts of the Section 404 program, this is primarily a federal effort. The regions must also coordinate, as appropriate, with other federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., Corps of Engineers, Natural Resources Conservation Service (NRCS), Fish and Wildlife Service, etc.).

#### ***CWA Section 311 (Spill Prevention Control and Countermeasures (SPCC) Program***

Section 311 is a CWA authority but responsibility for compliance monitoring, enforcement and implementation resides in a number of different regional divisions including: Emergency and Remedial Response; Superfund; Hazardous Waste Cleanup; Environmental Cleanup; Ecosystems Protection and Remediation; and Waste Management.

Compliance and enforcement efforts in CWA 311 should focus on ensuring that regulated sources have maintained the required Spill Prevention Countermeasures and Control (SPCC) plans. Regions should check compliance monitoring at facilities subject to SPCC requirements to

ensure that the plans are adequate and meet the regulatory requirements, particularly with regard to physical security requirements. In light of continuing concerns regarding chemical safety, regions should also consider the following factors in focusing their targeting and inspections efforts:

- significant quantities of oil
- proximity to population centers
- proximity to critical infrastructure

## **Enforcement**

### **NPDES Program**

The underlying tenet of the enforcement program is that each violation deserves a response. The appropriate response to different types of violations is contained in the EMS. Regions are expected to evaluate all violations, determine an appropriate response per the EMS, and take that action. Region should focus actions in the national priority areas while maintaining a presence in all water programs.

In addition to initiating new enforcement actions, regions are expected to negotiate settlements and track compliance with consent decrees and administrative orders and to take all necessary actions to ensure compliance with the terms of federal enforcement actions.

### **Pretreatment**

Regions should refer to the Enforcement activities description in Section III. C - Core Program Activities.

### **Section 404 (Wetlands)**

Regions should refer to the Enforcement activities description in Section III. C - Core Program Activities.

### **CWA Section 311 (SPCC)**

Regions should refer to the Enforcement activities description in Section III. C - Core Program Activities.

## **DATA QUALITY AND REPORTING**

### **NPDES Program**

In FY2006, ICIS-NPDES - the modernized Permit Compliance System (PCS) - will be launched. Additional guidance and policies will be provided under separate cover to the regions and states on the implementation and data entry procedures for the new system.

There are two components to CWA NPDES data management - (1) the state and federal programmatic data in PCS or ICIS-NPDES and (2) the federal enforcement case data required to be reported to ICIS including the CCDS and ICDS. All mandatory required data elements are expected to be entered into PCS or ICIS-NPDES. Where activities at majors have been traded for activities at national priority minor facilities (e.g., inspections), regions and states are expected to enter the minor data into PCS or ICIS-NPDES.

- All CWA NPDES federal enforcement cases are required to be entered into both PCS and ICIS until PCS is modernized is completed and further guidance is given. Annual reporting guidance will be provided in the Enforcement and Compliance Reporting Plan memorandum. (Refer to Section III. E)
- As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo, (<http://intranet.epa.gov/oeca/oc/campd/inspector/referenc/icds2005memo.pdf>) regions must report all ICDS data collected from on-site CWA inspection (NPDES, biosolids/sludge, pretreatment, wetlands and SPCC) by either of the following methods:
  - **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.
  - **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.

ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

#### **Pretreatment:**

- OECA strongly encourages regions to enter these inspections into ICIS in lieu of reporting them manually. Separate guidance will be sent to the regions on how to enter pretreatment inspections into ICIS.
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

### **Section 404 ( e.g. Wetlands)**

- OECA strongly encourages regions to enter these inspections into ICIS in lieu of reporting them manually. Separate guidance will be sent to the regions on how to enter wetlands inspections into ICIS.
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

### **CWA Section 311 (SPCC)**

- OECA strongly encourages regions to enter these inspections into ICIS in lieu of reporting them manually. Separate guidance will be sent to the regions on how to enter SPCC inspections into ICIS.
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

## **PROGRAM OVERSIGHT**

### **NPDES Program**

Regions should routinely review all DMR reports received for compliance with permit limits. (Note that regions may accomplish this review through a routine screen of the PCS data and reviewing the DMRs themselves as necessary.)

Regions also should routinely review data submitted by states to PCS and review other information available to them on a facility's compliance with its permit and other CWA requirements.

In reviewing regional performance, OECA will consider the following information that is currently based on data reported into PCS:

- number of SNCs *identified* (and percent of universe);
- number (and percent) addressed in a timely and appropriate manner;
- number of Watchlist facilities per region.

### **Pretreatment Program**

The regions should review the state program for evaluating local control authority operation during the 2005-2007 period of this Guidance. If problems are discovered the regions should take appropriate action.

## Wetlands

Since only two states have been delegated parts of the Section 404 program, this is primarily a federal effort. The regions must coordinate, as appropriate, with other federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., Corps of Engineers, NRCS, Fish and Wildlife Service).

## CWA Section 311 (SPCC)

Regions should routinely review the program to determine if spills are adequately being addressed by reviewing the Emergency Response Notification System database and reviewing SPCC inspection reports and results of Expedited Settlement Agreements to determine if routine non-compliance is being addressed.

## **3. SAFE DRINKING WATER ACT (SDWA) PROGRAM**

This section provides guidance for regions as they develop core drinking water compliance assistance and enforcement commitments for their annual workplan. Regions are to follow this guidance both with respect to their oversight of primacy states and tribes and with respect to their own actions in areas or particular rules where EPA directly implements the drinking water program. Where there are differences between this guidance and annual workplan guidance for the Tribal priority, regions should follow the Tribal priority guidance when addressing tribal water systems.

The following clarifications are provided to ensure that Headquarters and the regions have a common understanding of the program implementation requirements when negotiating the commitments:

- The Safe Drinking Water Information System Federal Version (SDWIS/FED) is the main database system used by EPA and the states to track public drinking water systems. SDWIS/FED is currently undergoing modernization with an expected completion date of October 1, 2005. The existing SDWIS/FED system will be used until the official switch to the modernized SDWIS/FED. If that doesn't occur on October 1, 2005, we will still use the existing capabilities to generate and track SNCs and exceptions.
- The Consumer Confidence Report Rule (CCR) will be added to the list of rules the regions are committed to address (it will be grouped with chronic contaminants for purposes of the commitment system).
- The regions are not asked to commit to addressing SNCs where SNC is not defined or where the SNC Exceptions Tracking System (SETS) does not have the capability to calculate exceptions or allow the SNCs to be addressed. It is anticipated that the modernized SDWIS/FED will have the capability to handle the new SNC definitions for the Filter Backwash, Interim Enhanced SWTR and Stage 1 Disinfection Byproduct Rules. If

modernized SDWIS/FED is fully operation on October 1, 2005, the regions will be expected to address the additional SNCs for Filter Backwash, Interim Enhanced SWTR and Stage 1 Disinfection Byproduct Rule for the full year. If modernized SDWIS/FED is not fully operational then the regions will be expected to start addressing these SNCs the quarter after full implementation of modernized SDWIS/FED.

- It is expected that the modernized SDWIS/FED will address the issue of “automatic” exceptions, which are those exceptions that the existing SETS automatically, but incorrectly, generates when a SNC is calculated. If we are still using the existing SDWIS/SETS system, automatic exceptions will still exist however, these “automatic” exception will not count against a regions’ commitment to address the SNC before it becomes an exception.
- SNCs should be addressed before they become exceptions. Headquarters views this as a manageable workload based on SNC data in recent years. Moreover, the expectation is that the regions will work primarily with the states to ensure that they are addressing SNCs. The regions should not have to address all the SNC themselves.
- Headquarters will provide quarterly data for SNCs, about to become exceptions, new exceptions, and old exceptions.
- Regions will report to headquarters on a quarterly basis within 60 days of receiving data from headquarters.
- In all cases, non-transient and transient non-community systems serving 500 users or less are excluded from the Regions’ commitments. Other exceptions may apply for each category of rules.
- On a quarterly basis, regions are to provide an explanation for each SNC at a large or medium system (serving more than 10,000 users and serving between 3,301 and 10,000 users, respectively) that became an exception in the preceding quarter.

The effort to address new SNCs before they become exceptions does not diminish the importance of addressing the backlog of systems in exception (all system sizes). As resources allow, the regions and states are encouraged to address backlog of systems in exception.

### **COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)**

#### Public Water System Supervision (PWSS) Program

Regions should target compliance assistance toward small drinking water systems (serving 3,300 or fewer users). Using the data contained in SDWIS/FED to identify patterns of noncompliance, regions can both target the small systems most likely to benefit from compliance assistance and assemble compliance assistance materials suited to their particular needs. Regions should coordinate with the drinking water program office and work with the states and tribes to

increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform required activities. Regions should focus compliance assistance resources on helping small systems and tribal systems comply with microbial rules. The Long Term 1 Enhanced SWTR (LT1) should be of particular focus for compliance assistance, if not previously provided, as the compliance date for requirements began in January 2005 for small systems impacted by this rule. For the Stage 1 Disinfectants and Disinfection Byproducts Rule and the Interim Enhanced SWTR, (promulgated in 1998) the need for compliance assistance may be less at this time because of the initial efforts to provide compliance assistance and the requirements for small system began in 2004 or earlier. Compliance assistance efforts will include outreach and education programs to ensure that sources understand both the requirements and the assistance available to help them comply. While the optimal time for compliance assistance is before a system violates a standard, compliance assistance is useful when a system fails to comply also. Where compliance assistance is likely to return a small system to compliance, the regions should incorporate compliance assistance in their tools for addressing SNCs at small systems, and encourage their states to do likewise.

We encourage the regions to use the Local Government Environmental Assistance Network (LGEAN) ([www.lgean.org](http://www.lgean.org)), the National Drinking Water Clearinghouse ([www.nesc.wvu.edu/ndwc](http://www.nesc.wvu.edu/ndwc)) and the National Environmental Compliance Assistance Clearinghouse ([www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse)) as sources of compliance assistance information and recommend marketing these resources to drinking water system operators as compliance assistance tools. We also encourage the regions to make available compliance information packages that can be distributed by sanitary survey inspectors.

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in the ICIS and report all on-site assistance visits and outcomes using the CACDS. Please note that the core compliance assistance program sets out other general guidance and expectations the regions should follow when providing compliance assistance to public water systems.

The "measures" area of the National Environmental Compliance Assistance Clearinghouse (<http://cfpub.epa.gov/clearinghouse/>) provides guidance documents, tools, and success stories regions can use to assess the effectiveness of their compliance assistance efforts. Regions should also encourage states to measure state compliance assistance performance and should facilitate states' efforts to report outcomes and outputs.

Regions should report the percentage of small systems that have received compliance assistance. Regions should have a goal of reporting 100% of the four specific compliance assistance performance measures identified in the Data Quality and Reporting section below.

### **COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)**

Regions should refer to the Compliance Incentives activities description in Section III. B - Core Program Activities.

## MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

### Monitoring

#### Public Water System Supervision (PWSS) Program

The primary enforcement authority (i.e., a state with primacy, a tribe approved for treatment as a state, or EPA implementing the drinking water program) is required to ensure an effective sanitary survey program. When appropriate, regions should also incorporate a SDWA component in all multimedia inspections of federal facilities as outlined in the federal facilities core program section of this guidance (Section 10). Significant deficiencies are to be corrected and regions are to ensure discovered regulatory violations are addressed in a manner consistent with timely and appropriate guidelines with annual workplan commitments.

#### Performance Expectations for Sanitary Surveys

In each fiscal year, regions should ensure sanitary surveys are performed at one third of the public water systems that are on a three-year sanitary survey cycle and at one fifth of the public water systems that are on a five-year sanitary survey cycle. This should be done by ensuring that the annual workplans contain commitments to perform sanitary surveys at an appropriate number of systems.

**Commitment SDWA01:** Number of surveys to be conducted, with a breakout for number on tribal lands.

#### Actions Taken in Response to Lead Action Level Exceedances

Each quarter Headquarters will provide a list of systems whose tap monitoring has exceeded the 90% percentile for 3 consecutive monitoring periods (we will provide the lead data at the same time we provide the SNC and Exceptions data). In turn, the regions are encouraged to follow up with the primacy agencies to monitor the progress community water systems and non-transient non-community water systems have made toward reducing lead in drinking water that exceeds the action level for lead. For direct implementation programs the regions should ensure that appropriate lead response actions are taken by the systems. The regions should report the results of any necessary follow-up at the same time they report on addressing their SNCs.

#### Underground Injection Control (UIC) Program

Regions should ensure an effective field presence through routine inspections of all classes of wells. The actual number of inspections and the distribution by well class will depend on the region and whether or not all or part of the program has been delegated to the states.

### Enforcement



## Public Water System Supervision (PWSS) Program

Regions are to take timely and appropriate action to address all circumstances that present or have the potential to present, imminent and substantial endangerment to public health, regardless of whether the contaminant is an acute or chronic contaminant. To ensure national consistency and promote establishment of strong precedent, the region is strongly encouraged to consult with the Water Enforcement Division prior to issuance of an order to address any imminent and substantial endangerment to public health that may exist.

Regions, states, and tribes with primacy should have **a goal of addressing 100% of all drinking water SNCs before they become exceptions**. To help prioritize efforts toward reaching this goal, OECA provides the following performance benchmarks. The region is to provide an explanation in its annual workplan commitments if it does not anticipate meeting a benchmark. On a quarterly basis, regions are to provide an explanation for each SNC at a large or medium system (serving more than 10,000 users and serving between 3,301 and 10,000 users, respectively) that became an exception in the preceding quarter. The regions are not asked to commit to addressing SNCs where SNC is not defined or where the SETS does not have the capability to calculate exceptions or allow the SNCs to be addressed.

- **Commitment SDWA03.a and SDWA03.b Microbial SNCs:** Ensuring compliance with the microbial rules (SWTR, TCR, IESWTR, FBR, LT1 and Stage 1 DBPR) is the first priority for regions, states, and tribes with primacy. Regions, states, and tribes with primacy are to address 100% of microbial SNCs at large and medium public water systems (CWS, NTNCWS, and TCNCWS), and at least 90% of microbial SNCs at small (serving up to 3,300 users) public water systems, before they become exceptions.
- **Commitment SDWA04.a and SDWA04.b Nitrates SNCs:** Regions, states, and tribes with primacy are to address 100% of nitrates SNCs at large and medium public water systems (CWS, NTNCWS, and TCNCWS), and at least 85% of nitrates SNCs at small public water systems, before they become exceptions.
- **Commitment SDWA05.a and SDWA05.b Lead SNCs:** Regions, states, and tribes with primacy are to address 100% of lead SNCs (initial tap monitoring, optimization of corrosion control, and public education) at large and medium community and non-transient non-community water systems, and 85% of lead SNCs at small community and non-transient non-community water systems, before they become exceptions.
- **Commitment SDWA06.a and SDWA06.b Chronic Contaminant and CCR SNCs:** Region, states, and tribes with primacy are to address 100% of all other chronic contaminant SNCs at large and medium community and non-transient non-community systems, and at least 85% of all other chronic contaminant SNCs at small community and non-transient non-community systems, before they become exceptions. Regions, states, and tribes with primacy are to address 100% of all CCR SNCs at large and medium community systems, and at least 85% of all CCR SNCs at small community systems,

before they become exceptions.

## **DATA QUALITY AND REPORTING**

Efforts to assess the quality of the data in the SDWIS/FED have shown that the data in the system are highly accurate, but many violations are not in the system. As a recent Inspector General Report<sup>2</sup> notes, data verifications conducted on violations information for the period between 1999 and 2001 found that SDWIS/FED contained only 65% of all health-based violations and 23% of all monitoring and reporting violations that should have been reported. While the largest burden for improving the quality of data in SDWIS/FED falls on the states, it is important that EPA also do its best to ensure data are reported accurately and completely.

### Compliance Assistance

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS. The regions should have a goal of reporting 100% of the following information into either SDWIS, ICIS or on a CACDS, in accordance with this guidance.

- Number of public water system SNCs that returned to compliance as a result of an on-site compliance assistance visit and which were not the subject of a reported enforcement followup activity.
- Number of small and tribal public water systems in violation that received direct compliance assistance, subsequently returned to compliance, and were not the subject of a reported enforcement followup activity.
- Number of public water systems that received compliance assistance.
- Number of public water systems that received compliance assistance during a sanitary survey.

### Public Water System Supervision (PWSS) Program

Regions, states and tribes with primacy are expected to ensure that all required data is input into SDWIS, including federal facilities as applicable. Regions with direct implementation programs, including those with authority for implementing the drinking water program on tribal lands, are expected to input the data themselves. If regions are directly implementing any of the new drinking water regulations, they must ensure that the required data is in SDWIS. Regions are expected to continue to support the legacy system SDWIS/FED until the modernized system is in production. Regions should review reports as appropriate to ensure changes to data are

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<sup>2</sup> *EPA Claims to Meet Drinking Water Goals Despite Persistent Data Quality Shortcomings*; Report No. 2004-P-0008; March 5, 2004.

successfully accepted in SDWIS/FED. All PWSS federal enforcement cases should be entered into both ICIS and SDWIS.

OECA is striving to have all federal inspections that are currently reported manually (e.g., sanitary surveys), entered into ICIS during this planning cycle and will provide separate guidance on sanitary survey reporting through the annual Enforcement and Compliance Reporting Plan Memorandum (see Section III. E).

Beginning in FY2006, all relevant ICDS information should be completed and reported for on-site PWSS inspections/evaluations and entered into ICIS. As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/referenc/icds2005memo.pdf>), regions must report all ICDS data collected from on-site PWSS inspections/evaluations by either of the following methods:

- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.
- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.
- ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

#### Underground Injection Control (UIC) Program

- OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle however, OECA will provide separate guidance on UIC inspection and evaluation reporting through the annual Enforcement and Compliance Reporting Plan Memorandum. (Refer to Section III. E).
- Beginning in FY2006, all relevant ICDS information should be completed and reported for on-site UIC inspections/evaluations and entered into ICIS. As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/referenc/icds2005memo.pdf>), regions must report all ICDS data collected from on-site UIC inspections/evaluations by either of the following methods:
- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS

forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.

- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.
- ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

## **PROGRAM OVERSIGHT**

### Public Water System Supervision (PWSS) Program

To ensure adequate program oversight, regions should review data in the SDWIS and review other information on compliance available to the region.

In evaluating regional performance, OECA will look at:

- the number of SNCs identified (and percent of universe);
- number (and percent) addressed in a timely and appropriate manner;
- number (and percent) exceptions;
- number (and percent) exceptions addressed; and number remaining.

If a drinking water Watch List is developed, the Watch List will replace the evaluation of exceptions.

### Underground Injection Control (UIC) Program

Regions should routinely review inspection reports, mechanical integrity test results and other information available on the compliance status of injection wells. Regions should also review other information available to them which suggests the existence of Class V well or wells. Based on review of this information, appropriate inspections or enforcement actions should be targeted.

## **4. FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT PROGRAM**

EPA and states have complementary roles in pesticide enforcement. In general, EPA is responsible for pesticide products and states are responsible for pesticide use. EPA is responsible for investigating and enforcing pesticide registration and labeling, data quality requirements (FIFRA Good Laboratory Practice Standards), the effectiveness of hospital disinfectant products, pesticide producing establishment registrations and the annual submission of production data, import and export requirements, and registrant reporting of unreasonable adverse effects

information. States conduct most field inspections, including product issues, and may take enforcement actions or in some cases, refer the case to EPA. The statute gives primary use enforcement responsibility to the states. However, regions are expected to follow up on all referrals received from headquarters and states.

A major focus of FIFRA is providing assistance, training, and oversight to states and tribes carrying out FIFRA related enforcement under cooperative enforcement agreements. This includes issuing credentials as appropriate and providing training and grants oversight. Regions should refer to the Federal Facilities section (Section 10) for guidance on including federal facilities in core program activities where applicable.

EPA and the public rely on pesticide manufacturers and formulators to provide accurate information about pesticides and their associated risks. Unregistered and ineffective antimicrobials, as well as products making false or misleading public health protection claims, pose a potential public health threat when the public makes inappropriate choices based on inaccurate or misleading information. Products used in agricultural or structural pest control settings may pose health risks to those working with or exposed to the chemicals. In particular, users must be informed about exposure to pesticides that are mixed, used, and stored or disposed of and must be informed how to properly handle and apply pesticides.

In FY2003 and 2004, regions and headquarters agreed through a consensus process that the following five FIFRA program areas within the core should receive special focus: worker safety, e-commerce, antimicrobial testing, label enforceability, and unregistered sources and product integrity. For each area, regions and headquarters jointly developed work plans of activities to be undertaken and expected outcomes. Similarly, regions and headquarters agreed through a consensus process to the following three focus areas for 2005: measures, imports (including product integrity), and enforcement infrastructure, with completion of remaining 2005 focus area work plan activities. Thereafter, the regions and headquarter will evaluate the progress in terms of planning for 2006-2007.

#### **COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)**

Although there is no target for assistance activities, assistance is an appropriate tool, in particular, to inform farm owners and workers about exposure to pesticides and how to properly handle and apply pesticides when there are new rules, sector specific compliance problems, or sectors with a preponderance of small businesses. Regions should refer to the Compliance Assistance activities description in Section III. A - Core Program Activities.

#### **COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)**

Regions should refer to the Compliance Incentives activities description in Section III. B - Core Program Activities.

#### **MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)**

Regions should work with pesticide state lead agencies and tribal pesticide agencies to target and conduct inspections and investigations to support the pesticide focus areas identified above. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements.

Regions are expected to track and prioritize tips and complaints, and follow-up, as needed. Follow-up means that the region needs to evaluate the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state as appropriate, and track it through resolution consistent with national guidance; or 2) obtain additional information through federal investigation or a show cause letter if necessary, and take federal action as appropriate; or 3) determine that follow-up is not necessary.

#### Performance Expectations

- **Commitment FIFRA12:** Project regional federal FIFRA inspections.

### **DATA QUALITY AND REPORTING**

It is critical that regions enter all federal, state, and tribal data into the FIFRA/TSCA Tracking System (FTTS), which is merged into the National Compliance Data Base (NCDB). All federal enforcement cases should be entered into both ICIS and FTTS. Annual reporting guidance will be provided in the Enforcement and Compliance Reporting Plan Memorandum. (Refer to Section III. E).

Beginning in FY2005, all relevant ICDS information should be completed and reported for on-site FIFRA inspections/evaluations and entered into ICIS. As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/index.html>), regions must report all ICDS data collected from on-site FIFRA inspections/evaluations by either of the following methods:

- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.
- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.

ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

Regions should enter the number and type of planned compliance assistance activities and

outcome measurement projects into the compliance assistance module in ICIS and report all on-site visits using the CACDS.

## **PROGRAM OVERSIGHT**

Each region should conduct state enforcement program oversight. This can include joint end-of-year reviews with the pesticides program, joint inspections to monitor quality of field work and training opportunities to standardize the knowledge-base of state inspectors.

## **5. EPCRA PROGRAMS**

EPCRA includes two distinct programs, Community Right-to-Know under EPCRA 313 and release notification and emergency preparedness under CERCLA 103 and EPCRA 304, 311 and 312. EPA and the public rely on EPCRA for information on chemicals entering the environment, and on the storage of chemicals at facilities. EPA, state, tribes, local entities, and communities rely on the combined EPCRA/CERCLA authorities to prepare local chemical emergency response plans, and to more safely and adequately respond to chemical emergencies. EPA must ensure that companies report accurately and within required time frames.

### **COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)**

Although there is no target for assistance activities, assistance is an appropriate tool, in particular, for smaller entities who meet the reporting criteria. Regions should refer to the Compliance Assistance activities description in Section III. A - Core Program Activities.

### **COMPLIANCE INCENTIVES (Sub-objective 5.1.2)**

Regions should refer to the Compliance Incentives activities description in Section III. B - Core Program Activities.

### **MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)**

#### **Monitoring**

##### **EPCRA 313**

Regions are encouraged to use screening and targeting tools to focus limited federal resources on national and regional priority areas. A general area of emphasis is to target facilities that meet reporting criteria but have not reported. In the EPCRA 313 program, regions are expected to conduct at least 4 on-site Data Quality inspections each fiscal year as part of their overall inspection commitment. In the EPCRA 313 program, regions are expected to conduct at least 20 inspections each fiscal year as part of their overall inspection commitment.

##### **Performance Expectations**

- **Commitment EPCRA01:** Number of federal EPCRA data quality inspections.
- **Commitment EPCRA02:** Number of federal EPCRA 313 inspections.

#### EPCRA 304/311/312 CERCLA 103

Regions are encouraged to use screening and targeting tools to focus limited federal resources on national and regional priority areas. A general area of emphasis is to target facilities that meet reporting criteria but have not reported. In light of continuing concerns regarding chemical safety, regions should also consider the presence of significant quantities of chemicals of concern and proximity to population centers in focusing their targeting and inspections efforts.

#### **Enforcement**

#### EPCRA 313; EPCRA 304/311/312 CERCLA 103

Regions may be asked to participate in enforcement case initiatives or cluster filings. These tools are used to further focus effort and resources. In all circumstances, cases filed as part of an initiative or cluster filing count as part of the annual workplan commitment, not as an add-on. OECA will remain sensitive to regional priorities when identifying initiatives or cluster filings. Regions will work with OECA to identify candidate issues, industries or sectors for enforcement case initiatives. OECA will use national meetings and conference calls as the means for selecting issues, industries or sectors for federal enforcement initiatives.

#### **DATA QUALITY AND REPORTING**

#### EPCRA 313; EPCRA 304/311/312 CERCLA 103

Each region is responsible for timely entry of inspection and case information into FIFRA/TSCA Tracking System (FTTS). All EPCRA 313; EPCRA 304/311/312; and CERCLA 103 federal enforcement cases should be entered into both ICIS and FTTS. Annual reporting guidance will be provided in the Enforcement and Compliance Reporting Plan Memorandum. (Refer to Section III. E).

For FY2005-2007, OECA is considering making ICIS the official database or record for the manually- reported EPCRA non-313 inspections/evaluations. If OECA decides this is an appropriate reporting scheme, a separate memo will be transmitted to the regions informing them to enter the EPCRA non-313 inspections/evaluations into ICIS.

For 2005-2007, all relevant ICDS information should be completed and reported for all EPCRA 313 and non-313 on-site inspections/evaluations and entered into ICIS. As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/index.html>), regions must report all ICDS data



collected from on-site EPCRA 313 and non-313 inspections/evaluations by either of the following methods:

- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.
- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.

ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site visits using the CACDS.

## **6. TSCA**

The Agency's TSCA program consists of four major elements: "core TSCA"; PCBs; AHERA, which covers asbestos in schools; and lead-based paint. Title III Radon activities will not be covered in this section

### **COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)**

Compliance assistance will be an important focus of OECA activity for the TSCA AHERA program in FY2005-2007. The EPA-supported Schools Compliance Assistance Center will be the primary vehicle for providing compliance assistance, with regions participating where resources permit. For lead-based paint, as part of the integrated strategy efforts, regions will continue to work with the regulated community to provide compliance assistance at appropriate opportunities such as home shows, meetings, and discussions with landlord associations. Inspectors will provide compliance assistance materials at inspections which will cover all aspects of the lead paint program.

### **COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)**

**Lead-based Paint:** As part of the integrated strategy, the lead paint program will continue to focus its work with the regulated community to look for ways to achieve a lead-safe environment. Efforts for achieving a lead-safe environment include voluntary actions on the part of the regulated community, compliance assistance to the regulated community, or when necessary negotiated settlements and enforcement actions.

PCBs: As part of the Agency's Persistent Bio-accumulative Toxics (PBTs) program, OECA will continue to work with regions to further decommission PCB-laden equipment. Federal compliance incentive programs will be initiated, as appropriate. Regions are encouraged to work with OECA when developing their own compliance incentive programs based on regional needs and priorities.

Core TSCA: Regions should review and follow-up on, as appropriate, disclosures submitted under the OECA Audit Policy and Small Business Policy. Under Core TSCA, self disclosures received by minimally-invested regions may be forwarded to OECA for appropriate action.

### **MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)**

#### **Core TSCA**

Regions must stay current and informed of the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and OECA's TSCA program priorities. Regions must track and prioritize tips and complaints, and follow-up, as needed. Regions 2, 4 and 5 are also expected to follow-up on all referrals received from headquarters, states, tribes and the public. Follow-up includes evaluating the tip or complaint to determine the appropriate next step. Minimally-invested regions (all regions other than 2, 4, and 5) are to refer tips and complaints to the Core TSCA Enforcement Center for follow-up, and to respond to questions from the regulated community. Under special circumstances all regions may need to conduct limited inspections as resources allow, and to work with the Bureau of Customs and Border Protection on the import/export program.

For those regions (other than 2 and 5) who chose to continue to invest additional resources in Core TSCA compliance and enforcement, the Core TSCA Enforcement Center will assist in targeting inspections, but the region is expected to provide legal and technical enforcement case support, and either obtain additional information through federal investigation, show cause letter, subpoena if necessary and issue appropriate federal action as appropriate; or determine that follow-up is not necessary.

#### **Performance Expectations**

- **Commitment TSC01:** Project the number of federal Core TSCA inspections.

#### **PCBs**

In FY2005-2007, the regions should use their enforcement resources to focus on the continued phase out of PCBs as well as monitoring PCB storage and disposal facilities. As appropriate, regional PCB personnel should coordinate with waste program personnel to ensure that the transfer of Brownfield properties are in compliance with PCB rules, guidance and policies. Using the Transformer Registration information, regions should target inspections toward users of high concentration PCBs and non-reporters. Enforcement follow-up to violations detected as a part

of these inspections should promote, where possible, the retirement of PCB transformers through Supplemental Environmental Projects (SEPs). Tips and complaints should be followed-up as appropriate.

Starting in FY2006, OECA will coordinate with the regions, Office of Pollution Prevention and Toxics (OPPT), and states to identify issues which would benefit from a coordinated compliance and enforcement effort and to identify criteria for targeting inspections based on an evaluation of the regulated community, potential risks, and enforcement data. During FY2006, pending new criteria for targeting inspections based on discussions between OECA, OPPT, regions, and states, regions would be expected to continue: targeting disposal facilities every three years (i.e., inspect one third of the facilities in their region); respond to tips/complaints and environmental incidents involving PCBs; follow-up on food/feed contamination referrals; and address regional PCB priorities. Regions should work with states operating under TSCA compliance monitoring grants to address these priorities as well as state priorities. Regions that award TSCA compliance monitoring grants to states need to submit mid-year and end-of-year reports to OC. In order to improve the efficiency of PCB inspections, OECA will continue to pilot the field use of the tablet computer to conduct inspections and write inspection reports.

#### Performance Expectations

During FY2005-2007, regions should inspect each PCB commercial storage and disposal facility in their region at least once so that a baseline of enforcement activity at these sites can be established. Regions may count state inspections at PCB commercial storage and disposal facilities conducted under the TSCA cooperative enforcement agreements towards meeting the regional commitments

**Commitment TSC03:** Inspect 33% of the PCB commercial storage and disposal facility universe.

#### AHERA (asbestos)

Compliance assistance will be the an important focus of OECA activity for the TSCA AHERA federal program in FY2005-2007 with a secondary focus on traditional enforcement as appropriate. Regions are expected to track and prioritize tips and complaints. If the regions receive a complaint containing allegations which provide a reasonable basis to believe that a violation has occurred, the region shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time. Regions are also expected to follow-up on all referrals received from headquarters, states, and tribes. Follow-up includes evaluating the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state as appropriate and track it through resolution consistent with national guidance; or 2) obtain additional information through phone calls, inspections, federal investigation, show cause letter, subpoena if necessary and issue appropriate federal action as appropriate; or 3) determine that follow-up is not necessary. Special attention should be given to tips alleging asbestos contamination at schools. Where EPA is the lead for inspections and

enforcement, resources should be targeted based on regional experience at:

- Charter schools
- Large Local Education Authorities (LEA) School districts, and
- LEAs that had settlement agreements or were asked to certify “compliance”
- School districts targeted for EJ or children’s health concerns
- Other LEAs as resources allow for this category. No targets or commitments are specified.

In non-waiver states with grants, the regions will follow-up on violations referred by the states, and develop appropriate enforcement responses. Where applicable, the regions should encourage states to apply for the “waiver” program.

### Performance Expectations

During the FY2005-2007 national program guidance period, HQ is asking the regions and applicable states to focus their compliance monitoring efforts on Charter Schools, the largest 100 LEAs and to review past settlement agreements.

Based on data and information collected from these inspections, and an evaluation of the compliance status in each inspection category, EPA will be able to improve its targeting of limited compliance assistance and compliance monitoring resources. OECA will make information available to the asbestos workgroup developing a draft National Strategy for Asbestos and to the workgroup that develops the Asbestos Action Plan information on the inspection data and the results of compliance status evaluations. **Note:** Inspections targeted for environmental justice or children's health concerns as part of a regional initiative may be substituted for charter school inspections.

- Charter Schools - There is anecdotal evidence that Charter Schools are not in compliance with the AHERA program. HQ is requesting compliance monitoring be conducted on this specific sector to provide a more accurate assessment of the overall compliance status of the Charter School sector.
- Largest 100 LEAs - A compliance review of the largest 100 largest public school districts will allow HQ to determine if these LEAs are maintaining their compliance responsibilities under AHERA. By inspecting the largest LEAs, EPA can insure that the largest school districts with the largest children populations are being protected.
- Past settlement agreements - This review will allow HQ to determine the effectiveness of the past settlement agreements where the LEA certified to remain compliant. If the settlement agreements had a positive impact, the program can focus its compliance monitoring resources on other types of LEAs, i.e., religious and private, not-for-profit schools, etc.

Regions may count state inspections by non-waiver and waiver states toward the following

three commitments.

**Commitment TSC04:** Conduct inspections at 5% of the charter school universe or 20 inspections, whichever is less and identify the number of Charter schools in each region. To determine the number of charter schools in a state, review the Department of Education's Charter School website at:

[http://www.uscharterschools.org/pub/uscs\\_docs/index.htm](http://www.uscharterschools.org/pub/uscs_docs/index.htm).

**Commitment TSC06:** Conduct inspections at 5 large LEAs (randomly select 5 individual schools from each LEA for evaluation) each year and identify large LEAs located in the region using a national list of the 100 largest LEAs. The following web sites can assist the regions in identifying the 100 largest LEAs (school year 2000-2001) by the number of students and faculty, and the number of buildings assigned for instruction to primary, middle and high school students. [http://nces.ed.gov/pubs2002/100\\_largest/table\\_01\\_1.asp](http://nces.ed.gov/pubs2002/100_largest/table_01_1.asp) (student/faculty population) [http://nces.ed.gov/pubs2002/100\\_largest/table\\_06\\_1.asp](http://nces.ed.gov/pubs2002/100_largest/table_06_1.asp) (number of buildings).

**Commitment TSC07:** Review past settlement agreements from 1991-1998, and conduct follow-up inspections at 5 LEAs each year.

If the regions cannot meet the above commitments they must provide an explanation based on facts and provide a rationale for:

- How the compliance monitoring TSCA resources will be redirected (e.g., regional or state priority facilities);
- Why it is not necessary to evaluate specific facilities or source categories subject to the minimum frequencies.

This explanation will be discussed during mid-year and end-of-year discussions between OECA and the regional toxics managers at national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

### **Lead-Based Paint Program**

The lead-based paint program will focus on meeting the 2010 goals established in the President's Task Force report by fully developing and implementing an integrated strategy which will include the 1018 Disclosure Rule program in partnership with HUD, and working with the regions, states, and tribes to implement the 402 and 406 rules. The integrated strategy will employ a broad range of compliance and enforcement approaches to reduce lead-poisoning in children. The strategy will also explore ways to incorporate other lead related programs and partnerships and leverage resources to bring about reductions in elevated blood levels. The current enforcement scheme (and resources) should focus primarily on Disclosure Rule (1018) violations, and secondarily on Section 402 and/or 406 violations in non-authorized states. Enforcement of Sections 402 and 406 should be coordinated with appropriate oversight of authorized state 402 and

406 programs. Likewise, the lead program will work to broaden the State Tribal Assistance Grant (STAG) program to fund a full range of compliance and enforcement activities.

Regions should screen tips and complaints for potential violations of the Lead Disclosure Rule, as well as the Section 402 Abatement, Training and Certification Rule and Section 406 Renovator and Remodeler Rule in states and Indian country without authorized programs. Each tip or complaint should be reviewed carefully to determine whether follow-up is necessary and, if so, the level of follow-up. In many cases, a follow-up letter to the violator will be the appropriate response to a tip or complaint. After screening the response for indicators of actual or potential non-compliance, the region should determine whether an on-site investigation or more resource-intensive level of compliance monitoring is appropriate.

Regions should continue to explore innovative ways to implement an integrated lead paint strategy. This will include methods to better target compliance activities, partner with state, tribal and local health care providers, as well as methods to identify “hot spots.” In addition, identifying and establishing a baseline for the universe of lead poisonings, and other similar activities to reduce the number of lead poisoned children, will be carried out.

### Performance Expectation

In states without authorized Section 402 programs, regions should conduct targeted Section 402 inspections of training providers and inspect work sites; this activity should be briefly described in the work plan submission as rationale for any trade-offs with Disclosure Rule or Section 406 inspection commitments.

- **Commitment TSC10:** Number of 1018/402/406 federal inspections; provide an explanation if no activity projected in this area.

### **DATA QUALITY AND REPORTING**

It is critical that regions enter all federal and state data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the TSCA, FIFRA, & EPCRA 313 National Compliance Data Base (NCDB). All TSCA federal enforcement cases should be entered into both ICIS and FTTS. Annual reporting guidance will be provided in the Enforcement and Compliance Reporting Plan Memorandum.

For 2005-2007, all relevant ICDS information should be completed and reported for all TSCA on-site inspections or evaluations and entered into ICIS. As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/index.html>), regions must report all ICDS data collected from on-site TSCA inspections/evaluations, including on-site TSCA inspections ICDS data collected by CAA inspectors, by either of the following methods:

- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using

the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.

- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.

ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site visits using the CACDS.

## **PROGRAM OVERSIGHT**

OECA and the regions should evaluate the overall effectiveness of the federal TSCA compliance and enforcement program to ensure that resources are being utilized as efficiently and effectively as possible. These analyses should address whether TSCA compliance and enforcement activities are addressing program priorities; effective targeting strategies are being utilized; violations are being identified and appropriate enforcement action is being taken; tips and complaints are priority and are being tracked and responded to; appropriate penalties are being assessed; written procedures/guidelines are consistent with Agency policy and are available to guide activities; adequate QA/QC programs are in place; adequate inspector training is available; and inspectors are in compliance with the EO 3500.1 training requirements; and data are accurately reported to the appropriate data systems in a timely manner.

## **7. CLEAN AIR ACT PROGRAM**

The regional Clean Air Act (CAA) stationary source compliance and enforcement program focuses primarily on the following areas: New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Maximum Achievable Control Technology (MACT), New Source Review/Prevention of Significant Deterioration (NSR/PSD), Title V Operating Permits, Stratospheric Ozone Protection, and Section 112(r) Risk Management Plans (RMPs).

For the FY2005/2007 planning cycle, the MACT and NSR/PSD programs have been identified as priorities, and the discussion of, and performance expectations for, those programs can be found in Section II - National Priority Activities.

For the remaining programs, the regions should continue to maintain a minimum level of activity consistent with the resources available for implementing the program and Agency policies,

monitoring the level and quality of effort by the delegated agencies, and participating in region-specific initiatives that may require greater EPA involvement. In designing these programs, the regions should take into consideration all aspects of the program (e.g., compliance evaluations, applicability determinations, assistance, incentives, enforcement), and focus on those activities that will yield the greatest benefit and are not duplicative of efforts by delegated agencies. Regardless, the regions, should provide sufficient oversight to ensure that delegated programs are being implemented consistent with the delegation agreements. The SRF does not replace the Compliance Monitoring Strategy (CMS) requirements to:

- annually evaluate whether states/locals have met the compliance monitoring commitments, and
- annually conduct an in-depth analysis of state/local compliance monitoring programs.

### **COMPLIANCE ASSISTANCE (Sub- Objective 5.1.1)**

Compliance assistance is an appropriate tool, in particular, when there are new rules, sector-specific compliance problems, and sectors with a preponderance of small businesses.

### **COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)**

Regions should refer to the Compliance Incentives activities description in Section III. B - Core Program Activities.

### **COMPLIANCE MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)**

#### **NSPS/NESHAP/MACT PROGRAMS**

Compliance evaluations should be conducted at Title V major sources and synthetic minor sources that emit or have the potential to emit emissions at or above 80% of the Title V major source threshold (80% synthetic minors) consistent with the CMS, and the biennial plans developed by the delegated agencies. Emphasis should be placed on ensuring that delegated agencies provide and maintain an accurate universe of sources subject to the policy; develop facility-specific CMS plans; maintain records of compliance monitoring activities; and report all Minimum Data Requirements (MDRs) in a timely manner consistent with Agency policies, and the business rules and Information Collection Request (ICR) of AFS. Once an evaluation is completed and a compliance determination is made, all evaluations should be reported into the national database of record, AFS, as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The results of evaluations conducted by either the regions or delegated agencies should not be held until the end of the fiscal year and input into the data system all at once.

Separate from investigations associated with the PSD/NSR Priority and discussed in the section on National Priority Activities, regions should continue any on-going investigations, and



initiate new ones as appropriate. These activities should be reported in AFS. This is a minimum data requirement in the AFS ICR.

During the FY2006 time frame, special emphasis should be placed on implementing the National Stack Testing Guidance. The guidance was developed in response to a report by the OIG which criticized the Agency for not issuing national guidance on stack testing, or providing sufficient oversight of state and local stack testing programs. The OIG concluded that this lack of guidance and oversight had an adverse effect on the use of stack testing as a tool in determining compliance.

In partial response to the concerns raised in the OIG report, the CMS addressed the issues of testing frequencies and the reporting of test results. Consistent with this policy, regions and delegated agencies should report all stack tests and the results in AFS. The Stack Testing Guidance addresses the remaining issues raised by the OIG, and thus focuses on those issues associated with the conduct of stack tests and the interpretation of the test results. For example, it addresses issues such as the time frames for conducting stack tests, the issuance of waivers, notification requirements, observation of tests, representative performance, and stoppages and postponements of tests.

During the first year of implementation, this guidance was treated as interim guidance to provide OC and the regions with an opportunity to evaluate its usage and monitor any potential problems that may arise as individual states/locals or tribes applied the provisions. The guidance will become final in Spring 2005, and reflect any necessary changes stemming from the one-year evaluation. Regions should ensure that delegated agencies are familiar with the Stack Testing Guidance, and implement their programs consistent with the guidance.

### **Performance Expectations:**

Consistent with the CMS, the regions should provide projections for: (1) the number of Full Compliance Evaluations (FCEs) at Title V majors, 80% synthetic minors, and other sources (as appropriate) by region and state; (2) the number of Partial Compliance Evaluations (PCEs) to be conducted by the regions (this is a minimum data requirement); and (3) the number of state PCEs to be conducted that were negotiated between the region and the state in the biennial plan (i.e., where states negotiated PCEs in lieu of conducting a certain number of FCEs at Title V majors or 80% synthetic minors). The state numbers should include delegated local agencies as appropriate. The default in CMS is 50% of the universe for majors, and 20% of the universe for 80% synthetic minors per year. This default applies only to the state projections. However, this default may vary from state-to-state depending on what is negotiated between regions and states under the CMS.

**Commitment CAA 01:** Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by region per year;

**Commitment CAA 01.s:** Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by state per year;

**Commitment CAA 02:** Number of Full Compliance Evaluations to be conducted at the 80% synthetic minors, and other sources (as appropriate) by region per year;

**Commitment CAA 02.s:** Number of Full Compliance Evaluations to be conducted at the 80% synthetic minors, and other sources (as appropriate) by state per year;

**Commitment CAA 03:** Number of Partial Compliance Evaluations (PCEs) to be conducted by the regions. This is a minimum data requirement;

**Commitment CAA 03.s:** Number of PCEs to be conducted by the states that were the result of the negotiation process for the year (could be the result of redirecting resources from FCEs to PCEs).

If the states/locals cannot meet the above commitments, the regions must provide a written explanation that should include the following:

- Information on how the compliance monitoring air resources will be redirected (e.g., national priority facilities, state air priorities);
- How majors and/or 80% synthetic minors will otherwise be monitored; and
- Why it is not necessary to evaluate specific facilities or source categories subject to the recommended minimum frequencies.

This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

**Commitment CAA05:** Regions should project the number of investigations to be initiated in FY2006. Investigation projections should be provided by air program (e.g., MACT, NSPS).

The regions should enter both initiated and completed investigations into AFS, and identify the targeted air program(s). This is a minimum data requirement. OECA uses this information to evaluate the overall health of the stationary source compliance monitoring program by comparing the number of FCEs, PCEs, and investigations. The region must provide an explanation if no activity is projected in this area. This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

The following activities are critical components of the core program. OECA will continue to collect and analyze information on these activities from either AFS, ICIS, or through CMS evaluations. The regions should be prepared to discuss any concerns or questions arising from the collection and analysis of the data.

- Regions should report 100% of the compliance results of all FCEs and PCEs as soon as practicable, and if feasible, in the next regularly scheduled update of AFS after an evaluation is completed and a compliance determination is made.
- Regions should ensure that 100% of the delegated agencies report the compliance

results of all FCEs and negotiated PCEs into AFS as soon as practicable after a compliance determination is made.

- Regions should negotiate facility-specific CMS plans with 100% of delegated agencies, periodically evaluate progress, and work with delegated agencies to revise the plans as necessary.
- Regions should utilize and encourage delegated agencies to use stack tests as a means of determining compliance. Regions and delegated states/locals should report 100% of the stack tests and the results (pass/fail) in AFS when a compliance determination has been made.

## **TITLE V OPERATING PERMITS PROGRAM**

Regions should continue to review Title V permits, both new ones as well as renewals, to ensure that they have adequate monitoring provisions consistent with the statute, underlying regulations, agency policies and judicial decisions. Although regions are no longer required to review all Title V certifications, they are still responsible for reviewing a subset of certifications, and ensuring that states/locals review them pursuant to the CAA CMS. In addition, they are responsible for ensuring that all permit program MDRs are entered into AFS in a timely manner.

### **Performance Expectations:**

Regions should review and comment as appropriate to the permitting authority on the compliance and enforcement provisions of a subset of the initial Title V permit applications they receive each year, as well as all renewals. Regions should ensure sources subject to a pending or current CAA enforcement action or investigation are not shielded by the Title V permit, and that draft Title V permits include appropriate placeholder language for the applicable requirements at any affected units. Further, regions should ensure that draft Title V permits include compliance schedules addressing consent decree requirements. OECA will collect information and discuss these activities with regional air managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

Regions and states should report results of 100% of certification reviews consistent with CMS and the MDRs identified for the program.

## **STRATOSPHERIC OZONE PROTECTION**

Consistent with CMS, all regional FCE's at major sources and 80% synthetic minors should include an evaluation of compliance with regulations promulgated to protect the stratospheric ozone layer if such regulations apply. When CFCs or other ozone depleting substances (ODS) are known or suspected to be present at a facility of concern, available regional resources also may be used to conduct PCEs at these facilities. The regions are reminded that this program is not delegable to states/locals or tribes. Nevertheless, some states/locals or tribes may have promulgated similar requirements, and thus should be evaluating compliance with their own requirements.

### Performance Expectations:

Regions should include evaluations of CFCs and other ODS as part of routine FCEs to the extent the regulations apply. This does not apply to states since this program is not delegable. The regions must provide an explanation if no CFC or other ODS evaluations will be conducted. OECA will collect information and discuss these activities with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

### **SECTION 112(r) RISK MANAGEMENT PLANS (RMPs and General Duty Clause)**

Although section CAA 112(r) is a Clean Air Act authority, responsibility for compliance and enforcement varies from region to region, and may not reside with the regional division responsible for the air compliance and enforcement program. Past compliance and enforcement efforts in section 112(r) have focused on ensuring that regulated sources have submitted the required Risk Management Plans. Regions are currently shifting efforts toward ensuring that submitted plans are adequate and meet the regulatory requirements. Headquarters will continue to provide support in this area. In light of continuing concerns regarding public safety, regions should consider the following factors in focusing their compliance monitoring efforts:

- significant quantities of chemicals of concern in a process;
- proximity to population centers of facilities that have significant quantities of chemicals of concern.

### Performance Expectation:

Regions should include CAA 112 (r) RMP inspections and Section 68.220 audits as part of an overall program to determine compliance. This program does not apply to the states since this program is not delegable. If the program is delegated to a state or local agency, the regions should work closely with the delegated agency to avoid duplication of effort. The regions must provide an explanation if no CAA 112(r) audits or inspections will be conducted. OECA will collect information and discuss these activities with regional managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

### **ENFORCEMENT**

Federal enforcement will be considered where delegated agencies fail to take appropriate action. In addition, regions should take appropriate federal enforcement actions in situations where federal involvement could be particularly helpful in bringing the matter to a successful and environmentally beneficial resolution (e.g., a company with violations in more than one state, transboundary issues, recalcitrant violators, etc.), or is essential to ensure fair and equal environmental protection mandated by law.

For all cases newly listed in accordance with the “Policy on Timely and Appropriate Enforcement Response to High Priority Violations (HPVs)”, regions should adhere to the requirements of the Policy, and ensure that all MDRs are reported in AFS in a timely manner. Regions should work with delegated agencies to ensure that they are familiar with the HPV Policy, and implement their programs consistent with the guidance. OECA will collect information and discuss these activities with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

#### Performance Expectations:

The following activities are critical components of the core program. OECA will continue to collect and analyze information on these activities from either AFS or ICIS. The regions should be prepared to discuss any concerns or questions arising from the collection and analysis of the data. The regions must provide an explanation if the region will not be undertaking any of these activities. This explanation will be discussed with regional managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

- Evaluate and bring to closure 100% of any self-disclosures received by the region;
- Settle or litigate cases issued in years prior to FY2006 and ensure investigation and issuance of appropriate action for any open tips, complaints, or referrals received by EPA;
- Exercise 1997 clarified penalty authority against federal agencies for CAA violations in appropriate circumstances;
- Report 100% of MDRs accurately and in a timely manner in AFS consistent with the HPV policy and ensure that delegated agencies do the same.

### **DATA QUALITY AND REPORTING**

Data is an integral part of the CAA compliance and enforcement program; therefore, it is essential that regions and delegated agencies enter complete and accurate information into the national database in a timely manner. Complete, accurate and timely data is necessary for EPA, delegated agencies and the public to evaluate programs and institute corrections. For a complete list of MDRs for the program, please consult CMS, the HPV Policy, and the ICR for the program. A summary of the requirements can be found at the following website:

<http://www.epa.gov/compliance/planning/data/air/mdrshort.pdf>

The region must provide an explanation if no activity is projected in this area.

As stated previously, once an evaluation is completed and a compliance determination is made, all evaluations should be reported as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The results of evaluations conducted by either the regions or delegated agencies should not be held until the end of the fiscal year and input into the data system all at once. Regions should work with delegated agencies to ensure that they are familiar with the data aspects of CMS, the HPV Policy, and the ICR, and implement their programs consistent with them. This is critical since the air program is structured differently than other media programs in

that the type and timing of compliance data that must be reported into the national database are not specified by statute or regulations, but through Agency policy and an ICR for the program. Agreements with delegated agencies to provide complete, accurate and timely data should be incorporated in documents such as SEAs, PPAs or Section 105 grant agreements.

As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/index.html>), regions must report all ICDS data collected from on-site CAA evaluations (FCEs, PCEs, stack testing, RMP audits and inspections, and CFC evaluations) by either of the following methods:

- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.
- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.

ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle and will provide separate guidance on CAA NESHAP inspection reporting through the annual Enforcement and Compliance Reporting Plan Memorandum. (Refer to Section III. E) federal 112(r) inspections are required to be entered into ICIS.

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site visits using the CACDS.

#### Performance expectations:

The following commitments need to be undertaken by the regions during the period covered by this guidance.

**Commitment CAA 16:** Regions should ensure that delegated agencies have written agreements to provide complete, accurate, and timely data consistent with the CMS, HPV Policy and the AFS ICR; identify the agreement; and provide copies of the relevant language.

**Commitment CAA 17:** Regions and delegated agencies should enter all MDRs in AFS consistent with the Agency policies and the ICR. If for some reason a delegated agency

does not agree to enter the MDRs, the region is responsible for ensuring that the data is entered into AFS in a timely manner. If the region is responsible for entering state/local/tribal data, identify the agency.

The regions must provide an explanation if the region will not be undertaking these activities. This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

## **PROGRAM OVERSIGHT**

Consistent with the CMS and HPV Policy, regions should assess annually the performance of compliance monitoring programs and enforcement activities against the negotiated and agreed upon work plans to ensure that commitments are met. In addition, regions should conduct more in-depth analyses of the overall programs periodically to ensure that resources are being utilized as efficiently and effectively as possible. These analyses should address issues such as whether adequate inspector training is available; targeting strategies are being utilized to focus on environmentally significant sources; written procedures/guidelines are consistent with Agency policy and are available to guide activities; adequate QA/QC programs are in place; quality evaluations that meet the definition of an FCE are being conducted; stack tests are being conducted according to Agency guidance; investigations are conducted as appropriate; violations are being identified and appropriate enforcement action is being taken; HPVs are being identified and tracked; appropriate penalties are being assessed; and data are accurately reported to AFS in a timely manner. These evaluations should assess trends; recognize successes as well as document areas for improvement; and provide concrete recommendations for improvement. Evaluations should be based on activities such as monthly conference calls; quarterly/annual reviews; file audits; oversight inspections; and management and staff interviews. Results should be documented in a written report and provided to Headquarters. For further guidance in this area, see the CMS and the HPV Policy. Also, see the sections on EPA/State relations and core program activities.

### Performance Expectations:

The following commitments need to be undertaken by the regions during the period covered by this guidance. These commitments are critical in light of the Inspector General's findings and recommendations for the air compliance and enforcement program and the need to periodically evaluate implementation of the CMS.

**Commitment CAA 18:** Consistent with the CMS and HPV Policy, regions should evaluate annually whether compliance monitoring and enforcement commitments were met, and if not, why not. Regions also should evaluate how these commitments compare to previous years. The results should be documented in writing and shared with Headquarters.

**Commitment CAA 19:** Consistent with the CMS, regions should conduct at least one in-depth evaluation of a delegated program per year and provide the written results to

Headquarters. The delegated agency should be identified.

The regions must provide an explanation if the region will not be undertaking any of these activities. This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

## **8. RCRA PROGRAM**

### **RCRA Hazardous Waste Subtitle C Program**

EPA is committed to ensuring that hazardous waste is managed in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. However, all identified non-compliance with RCRA Subtitle C should be addressed by the Agency in accordance with its policies governing enforcement and compliance monitoring.

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. Regions should refer to the federal facilities section of this attachment (Section 10) for guidance on including federal facilities in core program activities where applicable.

#### Core Program Elements

- Inspections of treatment, storage and disposal facilities, as required under RCRA §3007(e), and state and local government operated treatment, storage, and disposal facilities, as required under RCRA §3007(d), to verify compliance with the following requirements established as standards per RCRA §3004(a) :
  - maintaining records of all hazardous waste which is treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
  - satisfactory reporting and compliance of the manifest system;
  - treatment, storage, or disposal of all waste received by the facility in accordance with the law;
  - establishing contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;
  - Training for personnel;
  - Financial responsibility.
- Inspections of generators to verify compliance with the following requirements established as standards per RCRA § 3002(a):
  - proper characterization of the hazardous waste;



- furnishes information on the general chemical composition of hazardous waste to persons transporting, treating, storing and disposing of such wastes;
  - ☐ record keeping on the management and disposition of waste;
  - ☐ proper labeling and identification of waste for storage, transport and disposal;
  - ☐ use of proper containers, tanks and drip pads for the hazardous waste;
  - ☐ use of the manifest system and all other means necessary to assure that hazardous waste is sent to the appropriate treatment, storage and disposal facility; and
  - ☐ submission of reports to the Administrator reporting the waste generated.
- Inspections of transporters to verify compliance with the following requirements established as standards per RCRA § 3003(a):
    - record keeping;
    - ☐ properly labeled waste;
    - ☐ use of the manifest system;
    - ☐ proper management of hazardous waste during transportation;
    - ☐ hazardous waste is delivered to treatment, storage and disposal facility that is permitted by law to take such waste.

#### RCRA Underground Storage Tank Subtitle I Program

EPA is committed to ensuring that underground storage tanks (USTs) are operated in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. However, all identified non-compliance with RCRA Subtitle I should be addressed by the Agency in accordance with its policies governing enforcement and compliance monitoring.

Regions should maintain an enforcement presence concerning leak prevention, leak detection, corrective action and closure, and financial responsibility violations<sup>3</sup>. Owners and operators that do not meet UST requirements are not only in violation of federal and state laws but also have USTs that present a threat of release (or have had a release requiring corrective action). These non-compliant USTs are gaining an economic advantage over competitors that are in compliance with environmental laws. These efforts will ensure that owner/operators of RCRA Subtitle I regulated facilities properly prevent and detect releases and take appropriate corrective action when releases occur.

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. Regions should refer to the federal facilities section of this guidance (Section 10) for guidance on including federal facilities in core program activities where applicable.

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<sup>3</sup>Regions should focus financial responsibility compliance monitoring activities in states that do not have a state fund.

## **COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)**

### RCRA Hazardous Waste Subtitle C Core Program

Compliance assistance activities should focus on newly regulated persons, persons subject to new regulations, and persons owning small businesses with compliance problems.

### RCRA Underground Storage Tank Subtitle I Program

Investments in outreach and assistance should be strategically focused (e.g., persons operating facilities on tribal lands where the tribes have a proprietary interest, persons owning small businesses with compliance problems).

## **COMPLIANCE INCENTIVES (Sub-objective 5.1.2)**

Regions should refer to the Compliance Incentives activities description in Section III. B - Core Program Activities.

## **MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)**

### Monitoring

### RCRA Hazardous Waste Subtitle C Core Program

The RCRA hazardous waste core program includes the compliance monitoring activities set forth in Part I and II below. Both state and federal compliance monitoring activities will be required in implementing the activities in Part I (i.e., maintaining the annual level of inspections of treatment, storage, and disposal facilities). To ensure a level playing field and oversight of state compliance assurance and monitoring activities, regions should maintain a federal presence in the hazardous waste core program, conducting the compliance monitoring activities set forth in Part II.

In light of continuing concerns regarding threats to human health and the environment posed by improper management of hazardous waste, regions should focus their compliance monitoring efforts on the following:

- never inspected generators;
- facilities that are significant non-compliers;
- facilities that are the subject of citizen complaints;
- non-notifier facilities that are believed to be generating hazardous waste;
- persons that generate, transport, treat, store, or dispose of significant quantities of hazardous

wastes, in particular those in proximity to population centers or environmentally sensitive areas; and

- recalcitrant or repeat violators.

In each fiscal year, the regions (in consultation with OECA) may conduct fewer or additional compliance monitoring activities if it is determined that such a deviation is warranted. All efforts should be made to adhere to the guidelines that are detailed below.

### Performance Expectations

The states and EPA regions should work together to determine the appropriate mix of federal and state compliance monitoring activities to meet hazardous waste core program activities. In making its determinations, each region should examine the compliance status of facilities within its region.

## **Part I. Combined State and Federal Core Activities**

### **A. Statutory mandated inspections -**

- Treatment, storage and disposal facilities: Inspect at least once every two years each operating treatment, storage and disposal facility, as required under SWDA §3007(e), i.e., 50% of TSDF universe annually.

**Commitment RCRA01:** Project by state the number of federal TSDF inspections conducted once every two years.

**Commitment RCRA01.s:** Project by state the number of state TSDF inspections conducted once every two years.

Note: Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated land disposal facility, defined under §3004(k). Once it is determined that a ground water monitoring system is adequately designed and installed, an operation and maintenance (O&M) inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems, significant changes to ground water monitoring systems, and actual or suspected changes in local ground water regimes. When hazardous waste is no longer being received, and the regulated unit has a ground water monitoring program in place, physical inspections can be replaced by record reviews of the sampling/analysis data and the quarterly/annual ground water monitoring reports generated from the detection monitoring activities. Where information from the reports indicates a potential problem, or there are changed circumstances, a physical inspection would generally be warranted.

- B. Generators (LQGs):** Annually inspect at least 20% of the large quantity generator universe, so that the entire universe is inspected in five years. The large quantity generator universe is the total number of generators that reported in the most recent biennial report.

**Commitment RCRA02:** Project by state the number of federal LQG inspections.

**Commitment RCRA02.s:** Project by state the number of state LQG inspections.

If inspection coverage is not expected to be provided for 20% of LQGs on an annual basis, the regions must provide an explanation that should include the following:

- Information on how the RCRA compliance monitoring resources will be redirected (e.g., national priority facilities, state priority facilities, never-inspected SQGs); and
- How LQGs will otherwise be monitored (e.g., file reviews, watch list); and
- For states proposing to redirect resources to never-inspected SQGs, information that shows no uninspected LQGs in RCRAInfo (not including facilities that notified in the last five years).

Because inspections at LQGs generally require more resources than an inspection at an SQG, inspection tradeoffs - the number of SQGs substituted for LQGs - should be at a 2:1 or greater ratio.

## **Part II. Federal Core Only**

### **A. Statutory mandated inspections -**

1. State or Local Government Operated Facilities

**Commitment RCRA03:** Annually inspect each treatment, storage or disposal facility operated by states or local governments as required under SWDA §3007(d).

2. Treatment, Storage and Disposal Facilities:

**Commitment RCRA04:** Annually inspect at least 2 TSDs per state.

3. Federal Facilities

**Commitment FED.FAC04 and FED.FAC04.s-** Statutorily-mandated inspections of federal facilities are discussed in Section 10

### **B. Generators (LQGs):**

**Commitment RCRA05:** Annually inspect at least 6 generators per state.

The regions are encouraged to perform these inspections for the following: national priority sectors, to support state referrals, to address illegal recycling, entities with violations in more than one state, environmentally sensitive environments, areas subject to environmental justice concerns, and particularly recalcitrant violators.

### RCRA Underground Storage Tank Subtitle I Program

Regions should work with states to assure compliance with UST requirements. EPA should continue to focus its federal inspection resources in areas that could produce the greatest environmental and human health benefits. Generally, EPA should focus its inspection resources on leak prevention, leak detection, corrective action and closure, and financial responsibility requirements.

Recommended factors to consider in identifying facilities to be inspected under the UST program include:

- owners and operators of multiple UST facilities;
- owners and operators of USTs located in Indian Country;
- owners and operators of large facilities with multiple USTs;
- owners and operators of facilities with USTs that are endangering sensitive ecosystems or sources of drinking water; and
- federal facilities.

### **Enforcement**

#### RCRA Subtitle C Hazardous Waste Program

Regions should refer to the Core Activities section of the Introduction to the Core Program for general information regarding these activities. Regions should also follow the January 2004 RCRA Enforcement Response Policy (and subsequent revisions) which provides information regarding the classification of a facility's non-compliance and in the taking of timely and appropriate enforcement actions.

#### RCRA Underground Storage Tank Program

Regions should take prompt and effective action on all UST violations discovered. Regions should utilize the appropriate enforcement tools, taking into account the seriousness of the violations, to address any detected non-compliance with the UST requirements. Regions should also refer to Agency policies regarding the appropriate enforcement response.

#### Imminent and Substantial Endangerment

Though not a specific element of the RCRA core programs, regions should utilize RCRA §7003 when appropriate for endangerments posed by solid wastes, hazardous waste and

underground storage tanks. Regions should refer to the appropriate EPA policies and guidances regarding the use of this authority.

## **DATA QUALITY AND REPORTING**

### RCRA Hazardous Waste Subtitle C Core Program

Federal and state enforcement personnel are required to report into RCRAInfo and ICIS the essential data elements to accurately reflect program activities and measure RCRA program performance. All RCRA federal enforcement cases must be entered into ICIS and should be entered into RCRAInfo to allow states to access the data. Reporting guidance will be provided in the annual Enforcement and Compliance Reporting Memorandum. (Refer to Section III.D).

Regions should enter their compliance assistance activities in ICIS. The regions should also enter their facility specific on-site compliance assistance activities in RCRAInfo. States are not able at this time to enter their compliance assistance into ICIS so they should continue to use RCRAInfo. Headquarters will generate RCRA compliance assistance numbers for federal activities out of ICIS.

All EPA-led inspections conducted under the 3007 authority should be reported on the Inspection Conclusion Data Sheet (ICDS) even if the inspection discloses that the facility is not a Subtitle C facility. As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/index.html>), regions must report all ICDS data collected from on-site RCRA Hazardous Waste Subtitle C inspections/evaluations by either of the following methods:

- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.
- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.

ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

### RCRA Underground Storage Tank Subtitle I Program

For 2005-2007, all federal enforcement activity should be entered into ICIS. Inspection Conclusion Data Sheet (ICDS) forms should be completed for all federal inspections, including

UST Expedited Settlements<sup>4</sup> and Case Conclusion Data Sheets (CCDS) should be completed for all federal UST cases. OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle and will provide separate guidance on UST inspection reporting. Reporting guidance on other UST activities will be provided in the annual Enforcement and Compliance Reporting Plan memorandum. (Refer to Section III. E)

As detailed in the September 10, 2004 ICDS Expansion, Implementation and Reporting memo (<http://intranet.epa.gov/oeca/oc/campd/inspector/index.html>), regions must report all ICDS data collected from on-site RCRA Underground Storage Tank Subtitle I inspections/evaluations by either of the following methods:

- **Manual reporting:** Submit summary ICDS information at mid-year and end-of-year using the form in Attachment A of the memo. First-line supervisors need to review the ICDS forms prior to compiling the ICDS data for mid-year and end-of-year reporting to verify its completeness and accuracy.
- **Integrated Compliance Information System (ICIS):** Use ICIS to enter the ICDS data. See Attachment B of the memo. HQ will then pull the ICDS information from ICIS for mid-year and end-of-year reporting.

ICDS data, both manually reported and directly entered into ICIS, are compiled in regional workbooks which are sent to the regions for certification. Regions should have in place a quality assurance process to verify that the ICDS data is correct and accurate.

Regions should report 100% of all EPA-led UST results on the ICDS.

UST Expedited Settlements and CCDS should be completed and entered into ICIS for federal UST cases.

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site visits using the CACDS.

## **PROGRAM OVERSIGHT**

### **RCRA Hazardous Waste Subtitle C Core Program**

In reviewing the program performance, EPA will consider the activities undertaken by the regions and states and the results reported back into RCRAInfo on those activities. EPA will review whether the regions and states are meeting the compliance monitoring commitments and whether the enforcement response, with regard to the type of enforcement tool utilized (e.g., administrative complaint, expedited settlement, NOV) and the response time taken to address the identified non-compliance, is appropriate. In particular, as the EPA is looking to quickly address

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<sup>4</sup>Expedited Settlements include UST field citations.

those violations that pose the greatest risk to human health and the environment, the Agency will also be looking at:

- number of inspections, investigations, and citizen complaints;
- number of SNC's identified (and percent of universe);
- number (and percent of universe) addressed and resolved in a timely and appropriate manner; and
- EPA's Watch List.

#### RCRA Underground Storage Tank Subtitle I Program

In reviewing the program performance, EPA will consider the activities undertaken by the regions and states and the results reported into ICIS or by other means to EPA regarding those activities. EPA will be looking at the enforcement response with regard to the type of enforcement tool utilized (e.g., administrative complaint, expedited settlement, NOV, etc) and the response time to address the identified non-compliance. EPA will also be taking into consideration programs under Subtitle I that have been developed to ensure compliance (e.g., significant operational compliance (SOC)).

### **9. FEDERAL ACTIVITIES PROGRAM**

The Federal Activities core program for FY2005-2007 is built around the following major areas:

#### **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) IMPLEMENTATION (Sub-objective 5.2.1)**

- Fulfill the Agency obligations under NEPA, Section 309 of the Clean Air Act, and related laws, directives and Executive Orders (all regions).
- Target high impact federal program areas (e.g., transportation and energy projects) to promote cooperation and innovation toward a more streamlined environmental review process (all regions).

**NEPA / CAA §309 Review:** Carry out EPA's responsibilities to review and comment on all major proposed federal actions to ensure that significant adverse effects are identified and are either eliminated or mitigated.

**NEPA Compliance and "Cross-cutters":** Carry out EPA's responsibilities to comply with NEPA and "cross-cutters" (e.g., Endangered Species Act, National Historic Preservation Act, Executive Orders on wetlands, flood plains, and farmland).

Prepare environmental assessments (EISs or EAs) for new source National Pollutant Discharge Elimination System (NPDES) permits, where a state/tribe has not assumed the NPDES program; off-shore oil and gas sources, including permits for deepwater ports EPA laboratories and facilities; and Clean Water Act wastewater treatment plant grants.



Prepare environmental assessments (EISs or EAs) for Special Appropriation grants (including the Colonias Wastewater Construction and Project Development Assistance programs) for wastewater, water supply and solid waste collection facilities; Border Environment Infrastructure Fund for the US/Mexico Border Environment Cooperation Commission projects; and reviews conducted under the "voluntary NEPA policy."

**NEPA CAA 309 Review and NEPA Compliance:** Regions shall input the results of their §309 EIS reviews and NEPA compliance actions into the Lotus Notes EIS Tracking Database maintained by HQ OFA, and the SAAP system maintained by HQ OW, respectively. Additionally, regions will report to the Office of Federal Activities quarterly on the status of their 309 reviews and NEPA actions pursuant to OFA's GPRAs reporting process.

#### Performance Expectations

- **GPRAs Performance Measure:** 70 percent of the significant impacts identified by EPA during the NEPA review of all proposed major federal actions will be mitigated in order to preserve air and water quality, wetlands, aquatic and terrestrial habitats, and endangered species; to protect Environmental Justice communities; and to prevent degradation of valued environmental resources.  
**Exception:** Provide an explanation if the region will not meet the benchmark.
- **GPRAs Performance Measure:** 90 percent of EPA projects subject to NEPA Environmental Assessment or Environmental Impact Statement requirements (water treatment facility project and other grants, new source NPDES permits and EPA facilities) result in no significant environmental impact.  
**Exception:** Provide an explanation if the region will not meet the benchmark.

#### **MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)**

- Improve environmental performance and cooperation with Goal 6 of the U.S./Mexico Border 2012 plan (Regions VI and IX).
- Enhance enforcement, compliance and capacity building efforts with Mexico and Canada relating to trans-boundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., PCBs, mercury), and other regulated substances (Border Regions).
- Improve performance of joint responsibilities along the border and points of entry into the United States by working with the Bureau of Customs and Border Protection (all regions).
- Fulfill International agreements and the Agency's RCRA obligations regarding notification of trans-boundary movement of hazardous waste (all regions).

**International Enforcement Capacity Building:** The majority of requested commitments fall to Regions VI and IX for U.S. Mexico border work in connection with the La Paz Agreement. Regions VI and IX will continue the implementation of U.S.-Mexico work plans for enforcement and compliance cooperation in the border region and work with the Bureau of Customs and Border Protection to improve performance of joint responsibilities along the border.

**Import/Export Program:** All regions will review the permit and compliance status of U.S. receiving facilities in connection with 100% of the notifications for the import of hazardous waste they receive from HQ EPA and, based on their review, recommend consent or objection to notifications within the time periods allowed under applicable international agreements. Headquarters will process notifications for import and export of hazardous waste to ensure compliance with domestic regulations and international agreements; consent or object to import notifications and acknowledge consent/objection to export notifications; track the flow of hazardous waste both in and out of the United States based on manifests received from the Bureau of Customs and Border Protection; and conduct compliance monitoring and prepare memoranda of referral for appropriate enforcement action. Upon receipt of the referrals, each region is responsible for determining whether or not to pursue an enforcement action against apparent violations of the law relating to transboundary movements of hazardous waste and must inform Headquarters of its decision and the ultimate outcome of each case.

In order to ensure a coordinated approach between EPA and the Bureau of Customs and Border Protection, regions must also alert headquarters regarding interactions they may have with the Bureau.

## **10. FEDERAL FACILITIES ENFORCEMENT AND COMPLIANCE PROGRAM**

### **Background**

As an integral process of EPA's on-going efforts to improve environmental compliance at the 8,000 plus federal facilities nation-wide, FFEO and the regional federal facilities program managers/staff have developed this core program guidance for FY2006. The FY2006 activities outlined below were developed to advance the goals outlined in the National Federal Facilities 2006 Program Agenda.

This program guidance identifies the nationally-coordinated activities under OECA's purview. This guidance reflects that environmental stewardship and pollution prevention activities should largely be staffed by others (including OPPTS) with more responsibility for these particular areas. Compliance assistance activities should be carefully targeted on a priority basis, and leveraged as much as possible, including through more partnerships with FedCenter and other arrangements. It is imperative to maintain an appropriate enforcement presence through a targeted inspection program, with swift and meaningful follow-up.

These activities are anticipated to serve as a baseline of priority activity from a national program perspective, in addition to which the regions may pursue their own regionally-identified priorities (including regional activity in support of the national priorities, regional integrated strategies, and geographically-based inspection "sweeps"). All federal facility activities will be measured using the relevant CCDS and counted in achieving OECA's overall goal of a **5% increase** in the pounds of pollution reduced, treated, or eliminated, and achieving a **5% increase** in the number of regulated entities making improvements in environmental management practices.

## COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

Compliance assistance remains a vital tool in abetting improved environmental compliance at federal facilities. With continuing budgetary constraints, it is imperative that compliance assistance efforts be targeted to support priority areas, which include the Federal Facility Integrated Strategy areas (listed below) as well as implementation of Environmental Management Systems (EMS). With respect to EMS, we support continual improvements in federal EMSs, in particular by including Environmental Management Reviews (EMRs) in integrated strategies, including EMS improvements in enforcement action settlements and including EMS questions in multimedia and single media inspection checklists. FFEO will also work to develop, in conjunction with the EO 13148 Interagency Work group, metrics to measure environmental progress at facilities with EMSs.

The recent creation of an independent federal facility environmental compliance assistance and stewardship center - FedCenter (<http://www.fedcenter.gov>) will be pivotal to future collaborative compliance assistance efforts. FedCenter will serve as the catalyst for increased cooperative compliance assistance efforts both within EPA and other federal partners. FedCenter will increasingly become the federal portal for dissemination of environmental compliance information and tools.

### Performance Expectations

- *Compliance Assistance Activities*

Each region will develop at least three compliance assistance activities (such as a seminar, training, workshop, education/outreach activity, etc.). One activity should address EMS implementation and two activities should support the integrated strategy areas. These compliance assistance activities can be developed for delivery through the region or through FedCenter.

**Commitment FED-FAC01:** Each region will conduct at least three compliance assistance activities for federal facilities.

- A. One activity to address EMS implementation; and
- B. Two activities to address Integrated Strategy areas.

## COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

Regions should refer to the Compliance Incentives' activities description in Section III. B - Core Program Activities.

## MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

### Compliance Monitoring

### Performance Expectations

- *Multi-media inspections*

Each region will conduct two multi-media inspections to support the Integrated Strategy areas. Regions may substitute four single media inspections in lieu of one multi-media inspection. FFEO encourages including EMS questions in multi-media and single media inspection checklists.

A multimedia inspection consists of (1) a CAA, CWA, or RCRA program inspection plus at least one additional program under a different statute for the same facility; or (2) some combination of two or more CAA, CWA, or RCRA program inspections at the same facility. To count as a multi-media inspection, no more than three months may have elapsed between an inspection by one program and subsequent inspection by another program. FFEO encourages including EMS questions in multi-media and single media inspection checklists.

**Commitment FED-FAC03:** Number of multi-media inspections, or single media inspections to be conducted; provide an explanation if below the target level.

- *Annual inspections of Federal RCRA treatment, storage or disposal facilities as required by RCRA Sec. 3007(c)*

**Commitment FED-FAC04 and FED-FAC04.s:** Each region will conduct inspections at 100% of the region's universe of federal facility RCRA treatment, storage or disposal facilities, or arrange with an authorized state program that has been approved to carry out RCRA 3007(c) inspections to conduct such inspections.

NOTE: These RCRA TSDf inspections, if done by the region, can qualify as part of a multi-media inspection. EPA RCRA inspectors shall complete Sec. 6002 survey forms for 100% of EPA RCRA inspections at federal facilities, and return the form to FFEO within two weeks of completing the inspection. EPA RCRA inspectors shall give the Sec. 6002 *facility* survey to a representative at the inspected facility and request their completion of the survey and mailing to FFEO.

- *Single media inspections*

In addition to the RCRA TSDf inspections, each region will perform six single media inspections of federal facilities (in addition to any single media inspections conducted under multi-media inspections above and in addition to the RCRA TSDf inspections). Of these six inspections, at least three should support the Integrated Strategy areas. FFEO encourages including EMS questions in multi-media and single media inspection checklists.

**Commitment FED-FAC05:** Number of federal facility inspections to be conducted (in addition to any single media inspections conducted under multimedia inspections above); provide an explanation if below the target level.

- The inspections identified here are those that are unique to the federal facilities core program and are in addition to those outlined in other OECA core program guidances. These inspections may, however, simultaneously satisfy inspection commitments required in other OECA core program guidances (e.g., the requirement for inspection of 100% of all NPDES major facilities).

## **Enforcement**

FFEO strongly encourages the regions to take swift and meaningful enforcement actions to improve compliance at federal facilities. For FY2006, federal facility resources should be focused on taking appropriate and timely enforcement actions, as defined within relevant media-specific statutes for each federal facility: 1) on the Watch List; 2) inspected as a result of FFEO's Multi-media Inspection Initiative; or 3) inspected as a consequence of FFEO's Integrated Strategies efforts. Where appropriate, FFEO advocates including EMS improvements as part of enforcement action settlements.

## **INTEGRATED STRATEGIES**

Integrated strategies, which align enforcement, compliance, and stewardship activities toward maximum effect, can help the federal facilities program guide its actions toward greater environmental and health benefits. Integrated strategies include activities focused on: (i) assisting facilities to achieve and maintain compliance; (ii) inspecting and monitoring compliance; and (iii) prosecuting enforcement actions to correct and deter non-compliance.

### **VHA Integrated Strategy**

In FY2004, FFEO and the regions developed an EPA-Veteran's Health Administration (VHA) integrated strategy. FY2004 activity consisted primarily of compliance assistance activity. In FY2005, the strategy shifted from compliance assistance to focus on monitoring and enforcement. FFEO requested at least one inspection to be done per region at a VHA facility in FY2005. In FY2006, we are requesting that each region determine: 1) whether additional inspection activity is appropriate for their region; and 2) whether appropriate follow-up enforcement activity has been pursued in follow-up to each VHA inspection, and if not, ensure such follow-up is pursued. FFEO will be focusing on collecting data on VHA environmental compliance.

### **NPDES Wastewater Integrated Strategy**

In FY2005, FFEO initiated the development of this strategy. Activities consisted primarily of an effort to compile available current and historic data followed by a collaborative review of the data findings with federal agencies. FFEO will identify preliminary root causes of non-compliance. Regions were encouraged to utilize multi-media inspections to deal with lack of CWA penalty authority. Sample documents (NOV and FFCA) were developed by FFEO. In FY2006, regions are

asked to develop compliance assistance tools, conduct multi-media inspections and/or single media inspections to address NPDES wastewater requirements, and focus on follow-up enforcement activity for prior inspections.

### **NPDES Stormwater Integrated Strategy**

In FY2005, FFEO reviewed the Wet Weather National Priority to determine the potential for a federal facility focus. Regions indicated that some compliance assistance has already been done in this area. Regions have also identified federal construction projects as a strong area of potential for focusing our stormwater efforts. FFEO is coordinating with the Stormwater National Priority Team to determine the next steps.

NOTE: Where a region demonstrates that their federal facilities universe is not applicable for the Integrated Strategies, the region should work with FFEO through the ACS process to determine appropriate substitutes.

### **DATA QUALITY AND REPORTING**

OECA will provide reporting guidance in the annual Enforcement and Compliance Reporting Process Memorandum. (Refer to Section III.D above.)

In accordance with this guidance, all federal enforcement cases, including those for federal facilities, must be entered into ICIS, the database of record, and also entered in the associated legacy systems (e.g., AFS, PCS, RCRAInfo). OECA also requires all applicable CCDS information on all concluded actions to be entered into ICIS and applicable CACDS information be entered into ICIS.

Although the legacy systems are the database of record for many federal inspections, a large percentage of these are reported manually because there is no corresponding program database (e.g., RCRA USTs, CWA SPCC and Wetlands). Manually reported inspections are entered into the OC Workbooks at the middle and end of each fiscal year. OECA is striving to have all manually reported federal inspections entered into ICIS during the current planning cycle and will provide separate guidance on reporting these inspections through the annual Enforcement and Compliance Reporting Process memorandum referenced above. The legacy data systems also serve as the database of record for violations, significant violators (SNCs) and high priority violators (HPVs). For 2005-2007, regions must manually report all federal facility multimedia inspections through the OC Workbooks. Workbooks will be available to the regions for data entry at the midyear and end-of-year cycles.

At mid-year, FFEO will communicate the available data on federal facility core program accomplishments to each respective region. To accomplish this review, FFEO will pull regional performance data (e.g., enforcement actions, multi-media and single media inspections, and compliance assistance activities) from the available database of record or from the OC Workbooks to serve as a basis of discussion with the region. As mentioned above some data (e.g., certain

inspections that don't have a database of record, or have not yet been reported into the OC workbooks) must be reported manually by the region in order for FFEO to acknowledge progress on certain commitments. The core program commitments that will be communicated to the region will include: compliance assistance activities, multi-media inspections, single-media inspections, status of Watch List sites, RCRA TSDf inspections, and formal enforcement actions. At the end of the fiscal year, FFEO will compile an end-of-the year report to help evaluate the federal facility program performance and document regional accomplishments. This data will periodically be published in FFEO-issued reports and reported to OECA senior management.

## **11. MULTIMEDIA AND RAPID RESPONSE PROGRAM**

The multimedia compliance and enforcement programs are designed to foster a comprehensive approach to the resolution of environmental problems. "Comprehensive" means that applicable provisions of all environmental laws are used to achieve broad-based environmental benefits. This approach recognizes that many facilities and companies are operating in violation of more than one environmental statute. A multimedia strategy to target and address compliance problems and environmental harm results in a more effective overall management of a facility's or a company's environmental liabilities and is ultimately more cost-effective than bringing two or more independent media-specific enforcement actions. Multimedia-focused activities, including enforcement actions, reflect the goals of federal innovation and underlie much of the Agency's enforcement reorganization.

The Agency has been, and continues to be, successful in developing cases and initiatives that have brought significant environmental results in all media. While it remains critical to be able to develop large scale, nationwide actions, we also need the capability to have a more rapid enforcement response in order to have a truly effective program. The objective of the Rapid Response Program will be to "work backwards" from finding an environmental problem to reacting with the appropriate mix of authorities, in a more direct fashion than previously. The Office of Civil Enforcement's (OCE) Special Litigation and Projects Division (SLPD) will work with other Divisions and with the regions to identify cases where streamlined case development and a rapid response can produce **more** effective results. We anticipate that these actions will be brought in both administrative and judicial forums, and that we will partner with states in appropriate cases.

In some instances, the SLPD will work with the regions to develop the Agency's first enforcement response, with more traditional enforcement actions to follow. The cases may be streamlined, so that there will be fewer counts brought against violators in order to obtain speedy resolution, reserving our rights to bring additional actions or additional counts.

### **Compliance Assistance (Sub-objective 5.1.1)**

The areas that Headquarters believes warrant compliance assistance have been identified within specific program discussions. The primary focus of the federal multimedia program should be on compliance monitoring and enforcement. However, the results of a multimedia analysis of specific facilities or entire companies might prove useful in planning future compliance assistance

activities.

### **Compliance Incentives (Sub-objective 5.1.2)**

Regions should refer to the Compliance Incentives' activities description in Section III. B - Core Program Activities.

#### Performance Expectations

With regard to compliance incentives, regions will be expected to report on the number of voluntary disclosures received and resolved pursuant to incentive policies. To ensure that the Agency will achieve its goals, the regions are expected to perform activities that will increase the use of EPA incentive policies to conduct environmental audits or other actions that reduce, treat, or eliminate pollution or improve facility environmental management practices.

Each region will lead a regional Compliance Incentive Program or participate in a national Compliance Incentive Program directed at a particular sector and/or noncompliance problem, with emphasis on violations that, once corrected, are likely to result in measurable pollution reductions.

### **Compliance Monitoring**

The multimedia program will rely on the compliance monitoring efforts in existence for each media program. However, each region's multimedia targeting strategy and operational plan should establish protocols for coordinating multimedia investigations and actions among the individual media programs. Headquarters will continue to assist the regions in promoting a process-based approach as well as a more targeted and efficient approach to multimedia inspections in general. The goal is to achieve the best environmental result while using resources efficiently.

Participation in Rapid Response Program Activities could entail the dedication and possible reprogramming of compliance monitoring resources.

#### Performance Expectations

Regions will be expected to continue to develop and refine their multimedia targeting strategy and operational plan for initiation of multimedia enforcement activities. Elements of this plan should include projected multimedia inspections, case development training, and projected numbers of multimedia cases. Use of a multimedia checklist is not considered to be a multimedia inspection, but a tool for identification of potential multimedia targets.

Regions will be expected to participate in at least one rapid response activity per year, if requested. These activities will take one of three forms: a specific rapid response initiative to address a specific environmental or human health risk (e.g., worker protection), participation in a single multi-media, multi-regional nationally significant case, (e.g., a case against a national "bad actor"), or a multi-media, multi-regional case that directly supports a national priority (e.g., a case



that is nationally significant in support of NSR-PSD).

## **Enforcement**

### (a) General Approach

The multimedia or cross-statutory approach to case development can be employed in the context of three basic types of enforcement actions:

- against single facilities, where entire industrial processes at a facility are examined as a whole;
- against entire companies, where violations of different statutes that occur at various facilities indicate ineffective corporate-wide management of environmental compliance; and
- geographically based enforcement efforts arising from a comprehensive multimedia analysis of the environmental problem(s) in a given area (enforcement activities resulting from this analysis may be single or cross-media).

### (b) Rapid Response Program

Each region should support the Rapid Response Program which will place emphasis on more targeted and quicker responses - in any geographic region. The enforcement model will be collaborative: the SLPD intends to work closely with and augment regional, state, and headquarters media teams. The focus will be on cooperation between SLPD, the regions, the media enforcement program and, where appropriate, the states working together to find and implement the most expeditious and effective response to a given situation.

While the SLPD has substantial expertise in identifying sectors for enforcement actions, it is anticipated that most new matters will derive from those closest to the sources of the problem. SLPD will rely upon contacts within the regions and the states to identify potential areas for enforcement. In all instances, the goal will be the identification of potential harmful effects, and the coordinated, rapid resolution of problems.

Participation in Rapid Response Program Activities could entail the dedication and possible reprogramming of compliance monitoring resources.

## Performance Expectations

Regions will be expected to participate in at least one rapid response activity per year, if requested. These activities will take one of three forms: a specific rapid response initiative to address a specific environmental or human health risk (e.g., worker protection), participation in a single multi-media, multi-regional nationally significant case, (e.g., a case against a national “bad actor”), or a multi-media, multi-regional case that directly supports a national priority (e.g., a case that is nationally significant in support of NSR-PSD).

## **DATA QUALITY AND REPORTING**

No new reporting is required. Current multimedia reporting requirements are outlined in RECAP. The Multimedia RECAP measure is the number of multimedia inspections reported by a region. The number of multi-program and multi-facility referrals and penalty order complaints must be reported pursuant to the "Revised Approach for Counting EPA Enforcement Case Initiations and Conclusions, September 2003". Reporting guidance will be provided annually in the Enforcement and Compliance Reporting Process memorandum. (Refer to Section III.E) Regions are similarly reminded to notify the SLPD at Headquarters of all multimedia referrals.

All disclosures made through incentive policies and their resolutions must be entered into ICIS. Applicable CCDS information on concluded actions must also be entered into ICIS.

## **PROGRAM OVERSIGHT**

State involvement in national multimedia and Rapid Response casework is strongly encouraged. Regions should assess the level of state-initiated compliance assistance and enforcement activity once case management teams are developed and, where practicable, encourage state participation in the National actions. Generally, although there is no oversight of state multimedia program development, the regions may encourage the development of such programs as they see fit, requesting Headquarters assistance and resources as appropriate.

## **12. ENVIRONMENTAL JUSTICE PROGRAM**

Executive Order 12898<sup>5</sup> directs the Environmental Protection Agency (EPA) and other federal agencies to make environmental justice part of their mission, to the greatest extent practicable and permitted by law, by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects on minority and low-income populations.

Consistent with that mandate, the environmental laws that EPA implements and enforces direct it to protect all people from significant environmental hazards and risks. The Agency is keenly aware that minority and/or low-income and other sensitive populations frequently confront special environmental burdens caused by a host of factors including, but not limited to, those relating to: health, environmental conditions, and compliance assurance activities. Helping to satisfy its environmental justice mission to protect all people, including minority and/or low-income populations, the EPA accounts for these and other issues under the environmental statutes that it implements and enforces. For example, OECA has already explicitly established environmental justice as a targeting factor under the Clean Water Act and the Resource

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<sup>5</sup>"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" Executive Order, February 11, 1994

Conservation and Recovery Act.<sup>6</sup> Further, OECA has established environmental justice as a penalty consideration<sup>7</sup> and as a factor in approving Supplemental Environmental Projects in settlements.<sup>8</sup>

On April 15, 2003, former OECA Assistant Administrator, JP Suarez outlined the Smart Enforcement approach to compliance assurance, requiring OECA to target compliance and enforcement efforts strategically, to ensure that the most significant impacts to human health and the environment are addressed first. The directive identifies environmental justice as a cornerstone of the Smart Enforcement program. Notably, OECA's application of Smart Enforcement concepts provides for the use of existing environmental, compliance, and health data to target and prioritize compliance assurance activities to address significant environmental problems and to identify problems in communities with environmental and public health concerns.

Subsequently, OECA's Principal Deputy Assistant Administrator, Phyllis Harris, issued OECA's Environmental Justice Policy.<sup>9</sup> This policy further underscores the importance of environmental justice in program implementation.

In 2001 the EPA Environmental Justice Executive Steering Committee (a group composed of EPA Headquarters and regional leadership, including OECA's Deputy Assistant Administrator) directed that each program office and region should develop an Environmental Justice Action Plan. These strategic planning documents help coordinate the environmental justice activities of the Agency and establish a basis for accountability and monitoring progress. The Action Plan framework elements, which each region and program office has developed into specific programmatic activities, include the following:

1. *Risk Reduction / Protect Environmental and/or Public Health* - To ensure equal

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<sup>6</sup> Memorandum, FR: Assistant Administrator, "Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows," Section IV, B.2. "Priorities for SSO Enforcement Response" (April 27, 2000) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns). <<http://www.epa.gov/compliance/resources/policies/civil/cwa/strat312.pdf>>;

Guidance on the Use of Section 7003 of RCRA, § II, Bullet 1 (October 1997) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns). <<http://www.epa.gov/compliance/resources/policies/cleanup/rcra/971020.pdf>>

<sup>7</sup> See Memorandum from Steven Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance (September 30, 1997).

<sup>8</sup> See, e.g., Environmental Protection Agency, Supplemental Environmental Projects Policy 13-14 (May 1, 1998).

<sup>9</sup> "OECA Environmental Justice Policy" Memorandum, January 12, 2004.

implementation of environmental laws to achieve significant risk reduction which will improve the environment and/or public health of affected communities.

2. *Outreach and Communication* - To provide opportunities for meaningful involvement and ensure effective communication between the Agency decision makers and stakeholders, including all affected communities.

3. *Training* - To provide training for EPA managers and staff to enable them to incorporate environmental justice considerations into their decision making process.

4. *Federal, State, Tribal, and Local Government Coordination* - To ensure effective coordination across all levels of government to address the environmental and public health concerns of affected communities.

5. *Grants and Contracts Administration* - To promote effective and efficient management of all grants and contracts to ensure that the environmental and public health concerns of affected communities are addressed.

6. *Environmental Justice Assessment* - To conduct an assessment of the environmental justice indicators within affected communities as part of the decision making process.

Annual commitments, regional workplan commitments, and state performance partnership agreements (or similar EPA-State/Tribe Agency agreement) and grants for FY2005/2007 should be consistent with OECA's and each region's respective Environmental Justice Action Plan.

### **COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)**

Regions should appropriately target compliance assistance activities to address issues of environmental justice, consistent with smart enforcement principles. Prior to planning and targeting compliance assistance activities, among other things, regions should consider the following: (1) does the activity impact compliance with all health and environmental statutes; (2) has there been sufficient public input regarding the compliance assistance activity; (3) should other levels of government, including Tribal Government, be involved with the activity or consulted; (4) how have health, environmental, and compliance data sources been evaluated to determine priorities; (5) have priorities been established to ensure that disproportionately impacted areas are being targeted; and (6) have issues of Limited English Proficiency among minority populations and low-income populations or the regulated community been considered and addressed. Compliance assistance activities should be targeted to diminish risk relative to the conditions and health of the resident population.

In 2004, OECA and the regions created an environmental justice targeting approach based on health, compliance, environmental and demographic data. The approach, Environmental Justice Smart Enforcement Targeting Strategy (EJSETS) builds upon the original guidelines of Smart

Enforcement and the policy set-out in the "Toolkit for Assessing Allegations of Environmental Injustice." EJSETS provides the regions with consistent information and may be used in the context of targeting and planning; crafting specific remedies based on local conditions; helping to apply penalty considerations; developing supplemental environmental projects (SEPs); and measuring outcomes. The regions are encouraged to utilize EJSETS and its draft screening tool as another discretionary targeting approach as they consider how best to identify, address environmental justice concerns and measure results.

### **COMPLIANCE INCENTIVES (Sub-objective 5.1.2)**

Regions should refer to the Compliance Incentives activities description in Section III.B - Core Program Activities.

### **COMPLIANCE MONITORING (Sub-objective 5.1.3)**

Regions should appropriately target compliance monitoring activities to address issues of environmental justice, consistent with smart enforcement principles. Prior to planning and targeting inspections, among other things, regions should consider the following: (1) does the monitoring activity impact enforcement of all health and environmental statutes; (2) has there been sufficient public input regarding compliance assurance activities; (3) should other levels of government, including Tribal Government, be involved with the activity or consulted; (4) how have health, environmental, and compliance assurance activity data sources been evaluated to determine priorities; (5) have priorities been established to ensure that disproportionately impacted areas are being targeted; and (6) have differential patterns of consumption of natural resources among minority populations and low-income populations been identified. Inspections should be targeted to diminish risk relative to the conditions and health of the resident population.

### **Performance Expectations**

To ensure that the goals of environmental justice are accomplished, enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement/compliance activities. Moreover, enforcement/compliance activities addressing issues of environmental justice should be included in the region's Environmental Justice Action Plans and identified in annual commitments as having measurable environmental justice components. To address environmental justice concerns, regions should ensure that:

- 1) The public has access to compliance and enforcement documents and data, particularly in high risk communities, through multimedia data integration projects, other studies, and communication/outreach activities;
- 2) Public input is solicited, as appropriate, in the identification of facilities or areas of concern (*i.e.*, through periodic listening sessions, hotlines, outreach efforts, etc...) and during other appropriate phases of the compliance assurance process;
- 3) EPA's policies, programs and activities, including public meetings, address the concerns of the potentially affected populations, including those living in minority and/or low-income

areas;

4) Noncompliance is deterred and environmental and human health improvements are achieved by: (a) maintaining a strong, timely and active enforcement presence across all areas, including those with minority and/or low-income populations, and (b) targeting compliance activities in areas with high levels of noncompliance;

5) Enforcement and other compliance assurance actions are prioritized using environmental, compliance, and health data so as to minimize risk to human health and the environment and to maximize compliance, consistent with the goals of smart enforcement;

6) When possible, enforcement actions result in environmental or human health improvements, through pollution reductions and/or physical or management process changes;

7) When practical, participate in collaborative problem solving with other federal, state, tribal, and/or local agencies to address environmental justice concerns; participate in the environmental justice training efforts; and continue to participate in national, state, Tribal, or local dialogue around the issue of environmental justice (*i.e.*, NEJAC, listening sessions, etc...); and

8) Consider issues such as cumulative risk, health disparities, and appropriate demographic issues in the context of gravity based penalties, case development, referrals to the Department of Justice, and Supplemental Environmental Projects.

## **Enforcement Actions**

If an inspection identifies violations consult the EPA Supplemental Environmental Projects Policy and other enforcement memoranda (addressing penalty determinations) regarding the appropriate consideration of environmental justice issues. Issues pertaining to environmental justice, identified in cases of potential civil or criminal violation, should be documented and transmitted to the Department of Justice for use in case development, establishment of penalties, and remedy selection.

## **Program Leadership and Evaluation**

Training and Technical Assistance: regional Environmental Justice Coordinators, the Office of Policy, Analysis, and Communication, and the Office of Environmental Justice can be valuable sources of information to assist in integrating environmental justice issues into any regional enforcement program.

## **13. TRIBAL PROGRAM**

EPA's enforcement and compliance assurance program works with federally-recognized Indian tribes (tribes) to employ the Smart Enforcement approach to promote compliance through the use of appropriate compliance and enforcement stewardship in Indian country and in areas outside of Indian country where tribes and tribal members have recognized rights and interests protected by treaty, statute, judicial decisions or other authorities, including Alaska. (hereinafter Indian country). Whether implemented directly by EPA or an approved tribe, selecting the

appropriate tools - compliance assistance, incentives, monitoring, and enforcement - can provide important gains in environmental and human health protection. During FY2005-2007, OECA and the regions intend to continue to increase their presence in Indian country.

In spring 2004, OECA finalized the enforcement and compliance assurance program's *Protecting Public Health and the Environment Through Enforcement and Compliance Assurance in Indian Country: A Strategy for Results (Strategy)*, based upon comments received from tribes, states, and EPA regions and program offices. The *Strategy*, which will be issued under separate cover, is designed to help develop a common understanding among environmental managers and staff at the federal and tribal level about the nature of enforcement and compliance assurance programs. In addition, the *Strategy* outlines how EPA works with tribes to maximize compliance and reduce threats to public health and the environment in Indian country and other areas where Indian tribes and their members have rights and resources. This work is undertaken consistent with the federal government's trust and consultation responsibilities to tribes, government-to-government relationship with such tribes, EPA's authorizing statutes and implementing regulations, the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, and EPA's Strategic Goal 5: *Compliance and Environmental Stewardship*.

Following are the activities that OECA and the regions anticipate undertaking in FY2005-2007 to implement the *Strategy*.

#### **COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)**

OECA's compliance assistance and capacity building efforts in Indian country are designed to provide federal facilities, non-tribally-owned or operated facilities, and tribal governments that own or manage regulated facilities with the information and support necessary to maintain compliance. Consistent with the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, and the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy*, issued in January 2001, OECA and the regions utilize compliance assistance as the initial means of resolving non-compliance and maintaining compliance on the part of tribally-owned or managed facilities. To help implement this approach, during FY2005/2007, the regions plan to work with tribes to increase the compliance of tribal and non-tribal facilities in Indian country with environmental statutes through the use of compliance and technical assistance and to continue to tailor compliance assistance tools for use by tribes and facilities in Indian country. During FY 2005-2007, OECA's National Enforcement Training Institute (NETI) will continue to provide classroom training and self-instruction training materials to tribal environmental professionals.

#### **COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)**

Regions should refer to the Compliance Incentives activities description in Section III.B - Core Program Activities.

#### **MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)**

EPA conducts almost all compliance monitoring activities in Indian country because the Agency currently retains direct compliance and enforcement authority for most federal environmental programs in Indian country -- until such time as an EPA-approved program is in place for such areas. OECA will continue to work with the regions to address compliance monitoring issues in Indian country, including the potential authorization of tribal inspectors to conduct inspections on behalf of EPA. Regions should direct questions about authorization and the Guidance to OECA's Compliance Assessment and Media Programs Division. EPA works closely with tribes in carrying out compliance monitoring activities by consulting with tribes on inspection priorities and schedules and sharing information where appropriate.

Until tribal governments are delegated the authority to implement enforcement programs, EPA will inspect and, where appropriate, take enforcement actions in Indian country under its direct implementation authority against federal facilities, privately-owned and tribally-owned facilities. Consistent with the *EPA Policy for the Administration of Environmental Programs on Indian Reservations*, and the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy*, headquarters and regions will take enforcement actions when necessary if compliance assistance fails to correct violations at tribally-owned facilities in a timely fashion.

#### Performance Expectations

The regions will be asked to report on FY2005-2007 Tribal Performance Measures. Specific reporting requirements will be issued at a later date.

- A. Regional Enforcement Coordinators should be directly involved in discussing the types of projects to fund with EPA's enforcement and compliance assurance tribal resources; these resources are distributed by OECA's Compliance Assistance and Sectors Programs Division (CASPD) each fiscal year. EPA's enforcement and compliance assurance tribal resources are available to directly or indirectly support the compliance assurance and enforcement program in Indian country related to: (1) solid waste landfills consistent with section 8001(a) of the Resource Conservation and Recovery Act (RCRA); and (2) activities consistent with a particular (or multiple) federal environmental statutory or regulatory provision(s). Regions use a variety of mechanisms - grants, contracts, cooperative agreements, and interagency agreements - to support these activities.
- B. Regional enforcement programs should report project summary and measurement information about the enforcement and compliance assurance tribal resources in work planning documents or similar reports back to CASPD.
- C. OECA is currently developing/adapting additional, appropriate performances measures. These measures will be consistent with the *Strategy* and the FY2005-2007 national and regional priorities.

#### **DATA QUALITY AND REPORTING**

Complete and reliable information about the compliance status of facilities in Indian country



is important to the success of enforcement and compliance assurance activities. Accurate information enables EPA and tribes to understand and determine their enforcement and compliance priorities. In addition to encouraging tribes to input and maintain data, EPA intends to work with tribes to help ensure that national enforcement and compliance data systems provide the accurate, timely and relevant information needed for effective prioritization. In FY2005-2007 the regions should use data developed through regional inspections and existing EPA databases to help identify and address potential areas of noncompliance.

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

## **SECTION V. FY2006 OECA Workplan Submission Instructions**

### **A. Annual Commitment System**

Following release of the final OECA NPM Guidance, regions should continue discussions with their states and tribes to determine draft numbers for the commitments contained in the guidance. Attachment A is a complete listing of all FY2006 OECA commitments. Current schedules call for regions to enter their draft targets into the annual commitment system by July 1, 2005. NPMs can then review draft regional targets to ensure that all regional targets together “roll up” to result cumulatively in appropriate annual national targets. Headquarters and the regions will have approximately 2 months (July 1 through September 1) to resolve any issues and finalize annual regional targets. During this same time, regions will be engaging in negotiations with states and tribes to complete the grant process (PPAs, PPGs, and Categorical Grants), including translating regional targets into formal commitments supported by state-by-state agreements. All commitments should be final by September 30, 2005; all grants should be final by October 1, 2005.

The lead time before annual targets and commitments are finalized helps to provide regions, states, and tribes maximum flexibility in determining their commitments. Ultimately, headquarters and regions will share responsibility for identifying and resolving any conflicts over program priorities that present implications for the annual regional commitments. Issues that have not been resolved will be elevated to OECA’s Acting Assistant Administrator for decision.

### **B. Support and Training Requests**

#### **NEIC**

The regions should continue to send their annual requests for specific civil inspection, investigative, and technical support to NEIC’s Civil Program Coordinator. NEIC will evaluate the requests in order to develop the final list and schedule of support activities. To initiate discussions necessary to plan and schedule appropriate enforcement support for FY2005-2007, NEIC would like to receive requests from the regions by August 1, 2005. It is important that NEIC receive all regional submissions by August 1, 2005 to allow for an examination of all projects in line with

resources. These requests should be as specific as possible, and include information to help NEIC determine whether they can provide the requested support. As completely as possible, this information should include:

- facility/project name and location;
- desired enforcement support (type of investigation, technical assistance, information request, etc.);
- desired time frame (if critical);
- desired outcome of project (enforcement, measurable environmental impact, corrective action, settlement, compliance, etc.);
- Regional/Headquarters priority(ies)/initiative(s) involved;
- a brief description regarding how and why this particular facility/project was selected for NEIC support; and
- a name and phone number of a contact for additional information.

During the review of the requests, NEIC will have discussions with the various regional contacts regarding aspects of each request. The combination of information sent with the original request and that obtained during these discussions will enable NEIC to determine whether the requested support can be provided. The final decisions and commitments will be included in the negotiated workplans.

If you have any questions regarding this process please contact either Gene Lubieniecki, (303) 236-6112, or Robert Tolpa (202) 564-2337. Please send NEIC support requests to both Gene and Robert.

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### C. FTE Resource Charts

Attachment B contains the FTE resource charts similar to the charts completed in previous planning cycles. The charts are organized by goal, objective and sub-objective and then cross-walked to the media program elements. The importance of the FTE Resource Charts has been growing significantly because of increasing interest from the Office of Management and Budget, the Inspector General and Congress. It is imperative that these charts be completed and submitted to Robert Tolpa and Lisa Raymer on September 30, 2005.

2005 Enacted - This column should contain the region's final FY2005 FTE allocation derived from the Agency's FY2005 Enacted Operating Plan.

2006 Proposed - This column should contain the region's proposed FTE allocation for FY2006. Headquarters recognizes that FTE levels may change after the Agency receives the FY2006 enacted budget after October 1, 2005. Therefore this number is a "best guess" estimate.