

**FY 2002/2003 OECA  
Memorandum of  
Agreement (MOA)  
Guidance**

June 2001 Final Guidance

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## INTRODUCTION

### *PURPOSE OF GUIDANCE*

The Office of Enforcement and Compliance Assurance (OECA) Memorandum of Agreement (MOA) guidance sets forth the program priorities and activities for the Agency's national environmental enforcement and compliance program for Fiscal Years (FY) 2002 and 2003. This guidance is the basis for the development of individual MOAs between OECA and each regional office, identifying the overall program directions, work plans, specific activities and expected results. The MOAs provide a national operating plan to address program priorities and achieve Goal 9 of EPA's Strategic Plan, i.e., "to provide a credible deterrent to pollution and greater compliance with the law". (Attachment 1 lists the objectives and sub-objectives of Goal 9. Attachment 2 lists the Annual Performance Goals and Measures for Goal 9, and the State Accountability Measures.) OECA is currently revising the FY 2002 MOA priority measures on which the regions are to report. Specific guidance on these revised measures will be provided this summer.

The final MOA submissions are due to Headquarters by September 4, 2001.<sup>1</sup>

### *CONSULTATION PROCESS*

This guidance reflects the continuing efforts by OECA and the Regional Offices to more effectively involve state and tribal regulatory partners and interested stakeholders in the establishment of national priorities and the direction of the national program.

The current involvement process began over a year ago with a solicitation through the Regional Offices to their respective state and tribal agencies requesting potential MOA priorities for the next two year planning cycle, 2002-2003. Similar suggestions were grouped together and background information on a consolidated list of the most suggested priorities was prepared. On September 28, 2000, an enforcement and compliance assurance candidate priority list was published in a Federal Register Notice (FR Notice) with an accompanying request for comments from the public at large. Comments on the FR Notice were compiled, and the results from both the Notice and other stakeholder involvement were discussed at a November 14, 2000 national priorities meeting hosted by OECA and attended by regional enforcement and compliance assurance managers, state and tribal regulatory officials and state associations. In addition, suggested draft priorities were provided for review to the

Chair and Vice-Chair of the Compliance Committee of the Environmental Council of States (ECOS). This draft guidance incorporates the views expressed throughout the process.

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<sup>1</sup> Regions are reminded that Superfund enforcement and RCRA Corrective Action are covered under Goal 5. National program direction for Superfund activities are developed and conveyed through the SCAP process. RCRA Corrective Action is addressed through the RIP/BYP process.

## OECA NATIONAL PRIORITIES

### What is a Priority?

OECA's national program priorities are selected through a review of significant environmental risks or noncompliance patterns associated with industrial sectors, specific regulatory requirements, or geographic areas. The priorities are a set of key problems which have several common characteristics, including: national in scope; appropriate for federal attention and response; tailored strategies which include a variety of tools and approaches; and a commitment of resources dedicated to addressing the problem. Although regions will be expected to support national priorities, there are situations where a national priority will not affect or impact a region and there will exist substantial justification for a region's nonparticipation. It is also important to note that while Headquarters expects attention focused on the top national priorities, it also recognizes the need for and the importance of, the establishment of regional and state priorities, with the commitment to provide the resource flexibility necessary to implement those priorities.

### Regulatory Partners

States<sup>2</sup> play a crucial role in the implementation of the national environmental enforcement and compliance assurance program. Through joint planning between regions and states, governmental resources can be fully leveraged and duplication avoided. Regional priorities should be developed in partnership with their states by sharing information about compliance trends, negotiating work sharing agreements under existing frameworks, and undertaking joint activities. States are not required to adopt EPA's national priorities, however, this guidance provides flexibility for regions and states to mutually identify and implement their own priorities. It is anticipated that through joint planning between regions and states, national priorities and the core enforcement and compliance assurance program will be effectively addressed.

While this guidance is used primarily to develop the regional MOAs, it is also used to initiate discussions with states about the use of program grant funds and work planning for FY 2002 and 2003. We expect these discussions will include a review of EPA and state priorities, with the goal of developing the best combination of those priorities. OECA believes that issues raised by states about

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<sup>2</sup> "States", unless designated otherwise, includes the following regulatory partners: states, tribes, and local agencies.

the regional/state phase of the planning process need to be examined through an effort that OECA will convene in the near future.

**Priorities Identified in Previous Cycle Are Continued**

The proposed FY 2002/2003 priorities were first identified in the FY 2000/2001 OECA MOA, which we need to continue to address in the FY 2002/2003 cycle.

Based on stakeholder input, strong agreement was reached that each of these areas still require national and regional efforts. These priorities are identified below:

**FY 2002/2003 OECA NATIONAL PRIORITIES**

- × Clean Water Act-- Wet Weather
- × Safe Drinking Water Act-- Microbial Rules
- × Clean Air Act--New Source Review/Prevention of Significant Deterioration (NSR/PSD)
- × Clean Air Act --Air Toxics
- × Resource Conservation and Recovery Act--Permit Evaders
- × Petroleum Refinery Sector

Please note that Metal Services will not be continued as a national OECA priority in FY 2002/2003.

**Clean Water Priority Areas Directed Toward Human Health and Environmental Improvements**

*CWA--WET WEATHER*

**Priority Activity:** Implement programs to ensure compliance with all applicable regulations and with the: CSO Control Policy, SSO Enforcement Management System (EMS), Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows, National Concentrated Animal Feeding Operations (CAFOs) Sector Strategy (including the CAFO Implementation Plan), Unified National Strategy for Animal Feeding Operations, and the 2000 Storm Water Enforcement Strategy Update.

**Selection Rationale:** Run-off from wet weather events (i.e., overflows from combined sewers or sanitary sewers, CAFO discharges and run-off, and storm water run-off ) remains a leading cause of water quality impairment as documented in CWA Section 305(b) reports and represents a significant threat to public health and the environment. Sewer overflows contain raw sewage and

have high concentrations of bacteria from fecal contamination, as well as disease-causing pathogens and viruses. Sewer overflows often occur in areas frequented by the public such as parks, backyards, city streets, and playgrounds. Runoff from CAFOs enters water bodies through excessive and improper application of manure to cropland. Poor maintenance of waste lagoons, improper storage of animal waste, and excessive rainfall resulting in spills and leaks of manure laden water is another major source of water pollution. The total number of storm water dischargers is estimated to be several hundred thousand. According to the "1998 National Water Quality Inventory Report to Congress," 35% of the water bodies assessed by the states are water quality impaired and one of the leading causes of impairment is storm water runoff. OECA has directed that compliance assistance and enforcement efforts be prioritized by looking at regulated facilities contributing to the impairment of watersheds, beaches and shellfish beds, source water protection areas, environmental justice areas, and other sensitive areas. National strategies for all of the wet weather areas are now in place and are in various stages of implementation; new regulations are being developed for SSOs and CAFOs.

EPA compliance and enforcement efforts in the wet weather area are producing significant gains in the protection of human health and the environment. For example, under a 1998 settlement agreement, the City of New Orleans will renovate its antiquated sewage collection system to prevent future discharges of millions of gallons of raw sewage into the Mississippi River and thereby reducing the harmful effects of nutrient loading to the River and the Gulf of Mexico. The City will also implement a supplemental environmental project (SEP) to improve water quality along Lake Pontchartrain to protect public use of Lincoln Beach. In another 1998 settlement, the City of Atlanta will retrofit or construct new facilities to eliminate millions of gallons of raw sewage into the Chattahoochee River which will reduce the level of fecal coliform contamination in the River and in tributaries flowing through City neighborhoods where children play. Atlanta's corrective measures will also reduce nutrient loading in the West Point Reservoir, located downstream from Atlanta and a primary drinking water source for the City of LaGrange, GA. Atlanta will implement SEPs which require creation of a Greenway corridor and a stream clean-up project to improve the water quality of nearby waterways. Region IV has done outstanding work in the development of their Management, Operation, and Maintenance (MOM) Program which is a municipal self-assessment program for sanitary sewer collection systems. The MOM Program is designed to eliminate sanitary sewer overflows (SSOs) by ensuring proper management, operation and maintenance (O&M) of the infrastructure. In November 1998, EPA and the National Pork Producers Council entered into a compliance audit agreement whereby independent auditors will conduct compliance audits at pork producer facilities in exchange for reduced penalties for violations that are voluntarily and promptly disclosed and corrected. EPA Region X has been successful in targeting compliance and enforcement efforts at dairy facilities. In September 2000, EPA Region VII filed complaints against eight CAFOs in IA, KS, and NE for improper animal waste management and for damaging a wetland during construction of a hog feeding facility. To date, several of the regions are implementing watershed or sector (e.g., Region III and the Anacostia watershed and Region VI and the auto salvage sector) storm water initiatives and are piloting an expedited settlement process for storm water violations. Despite significant achievements in the wet weather area, substantial work remains to be done.

**Performance Expectations For the Wet Weather Priority Areas:**

**Combined Sewer Overflows**-- Regions should continue to implement their CSO response plan, submitted pursuant to the April 27, 2000 "Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows," to ensure that all CSO communities are under an enforceable mechanism to implement the nine minimum controls and a long term control plan. Regions should also continue undertaking the compliance assistance priorities set forth in this strategy.

**Sanitary Sewer Overflows**--There are approximately 20,000 separate sanitary sewer systems nationwide, all of which likely experience SSOs at one time or another. Regions should continue to implement their SSO response plan, submitted pursuant to the April 27, 2000 "Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows," to ensure that their SSO inventory is up-to-date and that a minimum of 20% of the priority systems (as defined in Chapter X of the EMS) are addressed with appropriate follow-up action each fiscal year, and that the capacity management, operation and maintenance (CMOM) guidance and small community outreach and compliance assistance are utilized where appropriate. As of April 2001, nine of the ten EPA regions have submitted their SSO response plans and are in various stages of implementation. These efforts have led to a significant increase in the number of enforcement actions initiated to address SSOs. The SSO Plan should continue to deliver compliance assistance for small communities to address SSO-related municipal deficiencies.

**Concentrated Animal Feeding Operations --** CAFOs were designated as an OECA MOA priority in FY1998; OECA issued the Compliance Assurance Implementation Plan for CAFOs in March 1998. EPA is at the mid-point of implementing that plan. There is a substantial need to continue effort in this area including working with states to get CAFOs currently required to have permits permitted under NPDES. In addition, regions should begin to focus efforts to ensure compliance with nutrient management requirements contained in CAFO NPDES permits. Regional CAFO MOA strategies should address the following: 1) work closely with states to implement and update the CAFO Sector Strategy, as needed (state strategies/plans should take into account existing state programs, state as well as federal priorities, and set forth criteria for risk-based targeting for inspections and enforcement); 2) ensure that **all** CAFOs are inspected by September 2003; 3) work with states to target inspections that emphasize nutrient management plans (including the land application of manure); 4) develop a training strategy to ensure staff is adequately trained to fully inspect and provide compliance assistance to CAFOs (including land application); 5) monitor CAFO compliance and respond to non-compliance trends; 6) continue targeting enforcement activities of non-complying CAFOs as appropriate; 7) ensure that all regional and state CAFO NPDES permit, compliance, and enforcement information is entered into the permit compliance system (PCS) or an equivalent system; 8) work with states, as appropriate, to develop compliance assistance materials for the new CAFO permit and effluent guideline regulations which will be issued by December 2002; and 9) continue efforts with states to identify the universe and report performance measures manually as necessary. In FY 2002/2003, regions with CAFOs will be expected to continue to inspect or to conduct joint inspections with the states as outlined in the 1998 Compliance Assurance Implementation Plan for CAFOs. Regions should

also coordinate their compliance assistance activities with EPA's Agriculture Compliance Assistance Center.

**Storm water**--Regions should continue to implement the "2000 Storm Water Enforcement Strategy Update" and complete the sweep(s) initiated to identify regulated industrial facilities or large construction sites that have failed to apply for storm water permit coverage or that are in violation of the requirements of their permit. Regions should prioritize storm water inspections, compliance assistance, and enforcement actions where there is water quality degradation and/or a threat to public health (e.g., storm water discharges contributing to impairment of a watershed, a drinking water source, issuance of a fish advisory, beach closure, or shellfish bed closure). Priority should be given to storm water problems associated with the other OECA MOA priorities (e.g., CAFOs). Watershed and sector storm water targeting initiatives and expedited settlement efforts should be expanded in other regions in FY2002/2003. OECA will provide support to ensure national consistency and to encourage the use of compliance incentive and compliance assistance programs in this area. Compliance assistance should continue for the Phase I Stormwater Rule and be emphasized for small construction activities and small municipal separate storm sewer systems (MSAs) regulated under the new Phase II Rule.

**Timeframes:** Wet weather actions will be taken throughout FY 2002/2003. In their MOA submissions, regions will be expected to include a brief description of how they are addressing the national wet weather priority, including specific activities planned, watershed initiatives, tools and any unique regional measures used, goals, outcomes, related milestones, and any anticipated tradeoffs. A region that proposes not to participate in a particular aspect of the national wet weather priority must provide a rationale in its MOA submission.

**Available Resources:** OECA has identified a number of documents and web resources to assist the regions in implementing this priority area. For CAFO's, there are 20 compliance assistance web resources, 1 compliance monitoring resource, and 1 enforcement resource. For CSO/SSOs, there are 40 compliance assistance web resources, 3 compliance monitoring resources, and 1 enforcement resource. For storm water, there are 13 compliance assistance web resources, and 1 enforcement resource. Visit <[www.epa.gov/oeca/main/strategy/index.html](http://www.epa.gov/oeca/main/strategy/index.html)> or <[www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse)> (see the MOA button on the left margin) for easy access to these resources. (Contact: Emily Chow (202) 564-7071.)

### **Safe Drinking Water Priority Focuses Compliance and Enforcement Efforts on Microbial Rules**

#### ***MICROBIAL RULES***

**Priority Activity:** Ensure compliance with microbial drinking water regulations through enforcement and compliance assistance. ORE expects to review and discuss with the regions



quarterly exceptions lists of those public water systems with unaddressed significant non-compliance for microbial rules to ensure that timely and appropriate actions are taken to remedy microbial non-compliance. Similar discussions between regions and states are advisable. In addition, region-specific compliance and enforcement strategies to address microbial non-compliance are recommended.

**Selection Rationale:** Contaminated drinking water is a direct threat to human health. The effects of contaminated drinking water can be severe, especially on children, the elderly, and persons with compromised immune systems. Adverse health effects of microbiological contamination include gastrointestinal distress, fever, pneumonia, dehydration (which can be life-threatening), or death. Serious effects were seen in the Milwaukee outbreak of cryptosporidiosis that was responsible for symptoms in over 400,000 persons, 4,000 hospitalizations, and over 100 deaths. In Austin, TX, contamination of drinking water wells infected over 1,300 persons. The Centers for Disease Control believes that there are significantly more cases of waterborne illnesses than reported, as mild cases are often mistaken as the flu.

Ensuring compliance with the microbial rules is the highest OECA drinking water compliance and enforcement priority. This priority is further justified by recent data. For example, the draft *1999 National Public Water Systems Compliance Report* prepared by the Office of Compliance notes that 61% of all drinking water violations in the nation in Calendar Year 1999 were violations of the Total Coliform Rule (TCR) or the Surface Water Treatment Rule (SWTR). This continues a trend, noted in the three prior reports, that microbial rules are the drinking water rules most often violated. The TCR, SWTR and the Interim Enhanced Surface Water Treatment Rule (IESWTR) drinking water regulations deal directly with microbial contamination and have been in effect for a number of years; there has been and continues to be substantial outreach and compliance assistance, as well as enforcement activity in these areas. New rules addressing microbial contaminants in drinking water are expected to be proposed and promulgated. Continued compliance assistance and enforcement activities will be needed to ensure that the regulated community knows its obligations and complies with the rules, thereby protecting public health. These new regulations create the need for continued enforcement efforts to protect the public and obtain the pollution benefits envisioned. EPA would be directly implementing and enforcing these regulations in states until they adopt the new regulations and receive program approval.

In recent years, we have seen the effective use of emergency authorities to address microbial contamination problems. However, regions should generally address non-compliance by public water systems before unaddressed violations lead to emergency situations requiring use of such authorities. Due to the existing high levels of non-compliance and the direct public health effects of violations, the microbial drinking water regulations overall remain a high priority for OECA. The regulations also provide information on sources of contamination. OECA has a particular interest in enforcement and compliance assistance activities where source water for the drinking water area or wellhead are contaminated or threatened. This may lead to actions against entities who are or may be contributors to contamination of source water.

**Performance Expectations:** Regions are expected to address through enforcement, targeted compliance monitoring or compliance assistance, all public water systems, including Federal facilities and tribally owned or operated systems, which become significant non-compliers for any of the microbial rules. Regions will use a rolling-base approach to identify systems as they become significant non-compliers rather than work from a fixed-base of significant non-compliers identified at the beginning of the fiscal year. Regions are expected to address systems in significant non-compliance with the microbial rules in a timely and appropriate fashion. As a numerical criteria, Regions are expected to address 100% of those public water systems in significant non-compliance with the microbial rules, before they become unaddressed significant non-compliers on the SDWA exceptions list.

Under the SWTR, in the past, the focus nationally was on ensuring that systems which were unfiltered and required to filter were on enforceable schedules to install filtration. This focus will now shift somewhat as the majority of these systems have installed filtration as required. Specifically, regarding SWTR, regions are expected to:

- (a) ensure compliance with those schedules through monitoring progress and by taking additional enforcement actions where there are violations of the schedules;
- (b) review the compliance status of filtered systems with the performance criteria in the rule; take actions against all systems which become significant non-compliers (SNCs) and against non-SNCs to the extent resources allow;
- (c) review the status of ground water systems which have been determined to be under the influence of surface water. Take actions to ensure that those systems required to filter are on an enforceable compliance schedule and are in compliance with that schedule; and,
- (d) review the compliance status of those systems which were never required to filter and are legitimately allowed to remain unfiltered by continuing to meet all of the applicable avoidance criteria. Take actions as appropriate, particularly in priority watersheds.

In FY 2002, regions will continue to focus compliance assistance on provisions of the Interim Enhanced SWTR which will become effective in December 2001, with a particular emphasis on small community systems. This effort will include outreach and education programs to ensure that sources understand the requirements and assistance to help them develop the programs and system changes needed to implement the rule(s).

**Timeframes:** Actions will be taken throughout FY 2002/2003. In their MOA submissions, Regions will be expected to include a brief description of how they are addressing the national microbial rules priority, including specific activities planned, tools and any unique regional measures used, goals, outcomes, related milestones, and any anticipated tradeoffs. A region that proposes not to participate in a particular aspect of this national priority must provide a rationale.

**Available Resources:** OECA has identified a number of documents and web resources to assist the regions in implementing this priority area. For Microbial Rules, there are 18 compliance assistance web resources. Visit <[www.epa.gov/oeca/main/strategy/index.html](http://www.epa.gov/oeca/main/strategy/index.html)> or <[www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse)> (see the MOA button on the left margin) for easy access to these resources. (Contact: Emily Chow (202) 564-7071.)

### **Air Priority Geared Toward Attaining National Ambient Air Quality Standards (NAAQS) Improvements**

CAA–NSR  
and PSD

- Priority Activities:**
- 1) Identify plants or facilities to be evaluated for possible violations of NSR or PSD requirements, particularly focusing on the coal-fired utility, petroleum refining and pulp/paper industry.
  - 2) Initiate an investigation on each plant or facility.
  - 3) Develop a list of modifications or additions (either physical or operational) that the facility may have undergone without appropriate state or federal review.
  - 4) Inspect plants and issue CAA 114 requests and/or conduct administrative depositions of key plant personnel to identify those activities that may be PSD or NSR modifications.
  - 5) Initiate enforcement actions and/or provide compliance assistance/incentives, as appropriate.

**Selection Rationale:** New Source Review (NSR) requirements in the Clean Air Act 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 PSD and NSR programs directly control emissions of criteria air pollutants, and the PSD program requires sources to address a number of toxic air pollutants. Criteria air pollutants have been identified by EPA as having serious chronic and acute effects on public health. They also affect public welfare by damaging property and the natural environment. Both PSD and NSR requirements can add substantial costs to the construction or operation of new sources, thereby creating an incentive for sources to avoid permit review by state or federal authorities. In addition, some sources may have unintentionally violated these requirements due to misunderstandings of the applicable law. 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. A review of permitting history over the past few years indicates that states are issuing very few PSD or NSR approvals, despite the fact that trade association journals and economic indicators show that industrial facilities have significantly increased their production and modified their processes to a degree that should have triggered many PSD and NSR actions.

EPA's efforts in the PSD/NSR arena during the last year have produced large environmental gains. For example, in the coal-fired power plant initiative, the Tampa Electric Company agreed in February of 2000, to pay a \$3.5 million penalty, spend almost \$11 million in Supplemental Environmental Projects (SEPs), and, most importantly, spend nearly \$1 billion to install Best Available Control Technology (BACT) on all 10 of its coal-fired units. These controls will result in major reductions in the company's NO<sub>x</sub> and SO<sub>2</sub> emissions. In the Refinery Initiative, EPA's agreements with BP-Amoco and Koch Industries, arrived at in July of 2000, are resolving pervasive NSR/PSD, leak detection and flaring problems at all of these companies' refineries. The combined agreements are worth over \$600 million, and their implementation will result in a reduction of 60,000 tons of NO<sub>x</sub> & SO<sub>2</sub> annually. Finally, in the iron and steel sector, Nucor Corporation recently agreed to pilot several state-of-the-art air pollution control technologies that should result in the reduction of 6,400 tons of nitrogen oxide over 8 years. It also agreed to install control technologies on its steel fabrication facilities that should result in the reduction of 3,000 tons of VOCs over 8 years. The Consent Decree covers all 8 of the company's mini-mills and 6 steel fabrication facilities located in 7 states. The company agreed to pay a \$9 million civil penalty and provide \$4 million for SEPs. Finally, EPA's work has encouraged disclosures of PSD violations.

**Performance Expectations:** PSD and NSR programs are the crucial provisions aimed at preserving air quality contained in the Clean Air Act. Accordingly, this strategy is a current priority, and is expected to continue throughout the 2002/2003 MOA cycle. The current emphasis on the coal-fired utility, petroleum refining, and pulp and paper industries is expected to continue yielding cases. In addition, other sectors, such as the mini-mill industry in iron and steel production, have shown considerable growth in recent years without a commensurate increase in permit activity, so they may bear additional scrutiny. As the existing cases continue, some of these new categories can be preliminarily evaluated. Investigation of potential violators can proceed as warranted.

1) Each region should target sources to identify instances where there is "probable cause" to believe there are PSD/NSR violations. Regions should select an average of one plant investigation per state per year relating to likely violations of NSR/PSD requirements, particularly focusing on the coal-fired utility, petroleum refining and pulp/paper industries. 2) For each source identified by the region, initiate an investigation to ascertain if plant activities have (or should have) triggered NSR or PSD. These investigations should include a review of comprehensive information on each plant or facility (e.g., state environmental files, filings with state utility commissions or permitting authorities, FERC and SEC filings, synthetic minor permits, etc.). 3) Each investigation should result in the development of a list of modifications or additions (either physical or operational) that the facility may have undergone without appropriate state or federal review. This list will help focus subsequent inspections, fact gathering and case development. 4) Regions should inspect plants and issue CAA 114 requests and/or conduct administrative depositions of key plant personnel to identify those activities that may be PSD or NSR additions or modifications. 5) Based on the results of the investigation, regions should initiate enforcement actions and/or provide compliance assistance/incentives, as appropriate. 6) Regions should encourage voluntary disclosures and follow EPA's September 30, 1999 reduced penalties policy that allows disclosures of violations discovered during the non-routine review of prior applicability determinations.

**Measures:** Success in this initiative will be measured in terms of the cases investigated that produce results. Positive results include notices of violation sent to the company, referrals to the Department of

Justice, settlement discussions with companies. The number of tons of pollutants reduced as an outcome of these activities will be the main indicator of success.

**Available Resources:** OECA has identified a number of documents and web resources to assist the regions in implementing this priority area. For NSR/PSD, there are 4 compliance assistance web resources, and 7 enforcement resources. Visit <[www.epa.gov/oeca/main/strategy/index.html](http://www.epa.gov/oeca/main/strategy/index.html)> or <[www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse)> (see the MOA button on the left margin) for easy access to these resources. (Contact: Emily Chow (202) 564-7071.)

### **Maximum Achievable Control Technology (MACT) Standard Adoption**

CAA--  
*AIR TOXICS*

**Priority Activity:** Regions will adopt MACT Standards to develop implementation tools and to become the national enforcement/compliance expert for the selected standards.

**Selection Rationale:** Air Toxics was selected as an OECA national enforcement and compliance assurance priority for FY 2000 and 2001 to address the unprecedented number of new regulations being promulgated under the Clean Air Act. The regions were asked to “adopt” 1 or 2 MACT standards per year to develop implementation tools and to become the national enforcement/compliance expert for the selected standards. MACT standards are promulgated under the Clean Air Act to regulate hazardous air pollutants posing the highest degree of risk to human health and the environment. For FY 2002 and 2003 each region will be expected to adopt one MACT per year.

The purpose of the “adopt a MACT” approach is to distribute the substantial implementation workload between Headquarters and the regions to ensure that regulatory requirements are clearly understood; guidance and compliance assistance tools (e.g. permitting and enforcement guidance, inspector checklists and applicability flow charts) are developed for both regulatory agencies and the regulated community; and targeted inspections and enforcement are carried out. By ensuring compliance with MACT standards, the Agency will reduce public exposure to toxic air emissions.

Between 1994 and 1999 approximately 60 new MACT standards were promulgated in response to the 1990 Amendments to the Clean Air Act. There are approximately 50 MACT standards under development and expected over the next two years. Consequently, the continuation of the “adopt a MACT” approach for the Air Toxics priority is necessary to address this unprecedented regulatory implementation workload.

During the FY 2000/2001 OECA MOA cycle, regions committed to “adopting” one MACT standard per year and developing implementation tools that generally included inspector checklists and applicability flowcharts. The implementation tools were made available to regional and state

counterparts and where appropriate, the regulated community, through a variety of methods including posting the tools on internet sites including EPA regional sites and the Unified Air Toxics Web site. In FY 2000, 10 environmentally significant MACT standards were adopted by the regional offices. For example, Region 1 adopted the Halogenated Solvent Degreasing MACT and developed the following tools: an inspection checklist; a screening guide for inspection targeting; a protocol for monitoring applicable work practices; an Internet based inspector training slide show and a compliance assistance wall poster for degreasing shops.

**Performance Expectations:** For the FY 2002/2003 OECA MOA cycle, OECA has provided to the regions a list of MACT standards that are recommended for “adoption.” OECA coordinated with the Office of Air and Radiation (OAR) in developing this list. This list provides a spectrum of MACT standards that is broad enough to provide sufficient options for all regions. When selecting MACT standards for inclusion in the program, OECA, OAR and the regions will consider the compliance date, the number and geographic distribution of regulated facilities, the pollutant risk, the impact on priority areas, input from state and local agencies as well as other OECA and Agency priorities.

For an “adopted” MACT standard, regions will be asked to complete a more comprehensive package of implementation tools and information to share with other regions. This package may include, but is not limited to, such items as source identification plans, inspector checklists, applicability flowcharts, and enforcement document templates. It is also expected that regions will conduct inspections and take appropriate enforcement actions and share their inspection/enforcement experience with other regions. Regions will work with state, tribal, and local agencies to promote delegation of MACT standards, and ensure that state, tribal, and local agencies conduct compliance inspections and take appropriate enforcement actions for the MACT standards adopted. If state, tribal, and local agencies do not take appropriate enforcement action, the regions will assume the enforcement lead in accordance with the established policy on Timely and Appropriate Enforcement Response to High Priority Violations.

**Timeframes:** Actions will be taken throughout FY 2002/2003. In their MOA submissions, regions will be expected to include a description of which MACT standard they are adopting, and the implementation tools they will develop. Regions are to assess their progress at meeting their adopted MACT commitments at the end of each fiscal year.

**Available Resources:** OECA has identified a number of documents and web resources to assist the regions in implementing this priority area. For Air Toxics, there are 82 compliance assistance web resources, and 34 compliance monitoring resources. Visit [www.epa.gov/oeca/main/strategy/index.html](http://www.epa.gov/oeca/main/strategy/index.html) or [www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse) (see the MOA button on the left margin) for easy access to these resources. (Contact: Emily Chow (202) 564-7071.)

### **Targeting Companies Which Handle Hazardous Waste Illegally**

**RCRA PERMIT**

*EVADERS*

**Priority Activity:** Regions should focus their facility screening, compliance monitoring, and enforcement resources on those companies (including Federal facilities) that are evading the RCRA regulatory system. This will ensure that illegal treatment and recycling practices are eliminated and will ensure the equitable treatment of those facilities that have complied with RCRA. As a result, human health and the environment will be protected from exposures to hazardous contaminants released as a result of illegal practices. Industrial practices (and processes) of concern include:

- C Illegal hazardous waste recycling operations (e.g., “sham recycling”);
- C Illegal dilution of hazardous wastes and other practices (e.g., introducing reagents or foreign materials) that circumvent hazardous waste determination requirements (including Toxicity Characteristic Leaching Procedure test results);
- C Illegal treatment, storage, and disposal of wastes that are no longer exempt under the Bevill amendment;
- C Treatment (e.g., incineration) of hazardous wastes containing lead and other pollutants in illegal RCRA units (e.g., thermal reclamation units);
- C Misidentification of hazardous wastes (e.g., relying on outdated or non-representative test results); and
- C Companies/Entities that have sought to include themselves within the ambit of various exceptions or exemptions to the RCRA Subtitle C system but failed to meet the terms of those exceptions or exemptions.

**Selection Rationale:** There is concrete evidence of wide-spread noncompliance with RCRA requirements. For example, some mineral processing facilities have taken the position that RCRA does not apply to their waste streams. Many of these waste streams have been regulated under RCRA Subtitle C since 1989, and have become subject to the land disposal restriction requirements (Phase IV (May 26, 1998)). Concerns (including historical violations) include but are not limited to: 1) commingling hazardous wastes with Bevill wastes and subsequently improperly disposing of the mixture; 2) failing to make proper hazardous waste determinations; and 3) operating hazardous waste treatment units without appropriate permits.

Allowing facilities to operate outside of RCRA presents an unreasonable risk to human health and the environment. For example, some manufacturers of waste derived fertilizer are receiving hazardous wastes to produce a product placed on the land. Some of these facilities have not managed such wastes in compliance with Subtitle C. In January 1997, Region VII issued a RCRA § 7003 order to one facility because their processing of incoming secondary hazardous materials to produce fertilizer resulted in a release of lead and cadmium to the environment, contamination of the facility, and nearby wetlands. It also resulted in employee airborne lead exposure levels that were 16.6 times higher than the allowable level and lead to an Occupational Safety Health Administration citation for violations of its lead standard. Another facility is now a Superfund site because of a zinc oxide pile that was leaching into the groundwater. Illegal waste handling

and management operations present significant environmental threats. Further, these operations continue to economically undercut those facilities that operate in compliance with environmental laws. Thus, a national focus is warranted for these operations.

We continue to find significant RCRA-related, noncompliance issues at foundries; however, due to recent court decisions, this remains a complex area and the regions should continue consulting with Headquarters.

**Performance Expectations for RCRA Permit Evaders:** Regions should work with OECA to implement the appropriate strategies to identify facilities (including Federal facilities) for compliance assurance and enforcement activities. Each strategy will address the following: identification of high risk facilities, areas, and/or communities of highest priority; compliance monitoring approach; state involvement; enforcement response options; settlement approaches; time frames; goals for improving the compliance rate for a given sector; and measures of success.

While compliance monitoring and formal enforcement actions serve as deterrents, it is also important to utilize other approaches and tools. For example, EPA regions and Headquarters should continue to identify compliance assistance/outreach and compliance incentive opportunities. Opportunities to achieve significant environmental benefits beyond regulatory compliance levels (e.g., voluntary reductions in emissions) should be pursued where appropriate. Thus, we encourage each region to include (as part of its settlement approach) supplemental environmental projects (where appropriate) that reduce emissions or discharges associated with “persistent, bio-accumulative and toxic” wastes (aka PBT wastes) and other priority chemicals being emitted or released. Where appropriate, issuance of RCRA § 7003 and other emergency orders to address upsets and episodic releases or emissions should be considered.

Additionally, regions (in consultation with EPA Headquarters) may elect to address similar environmental problems in other industries (e.g., metal services, SIC Code 3471 and 3479) as part of their RCRA permit evader focus. The goal is to ensure that RCRA-regulated facilities properly identify, manage, and dispose of their waste in accordance with all applicable RCRA environmental laws.

**Timeframes:** Appropriate activities will continue or be initiated throughout FY 2002/2003. Regions are to assess their progress at the end of each fiscal year.

**Available Resources:** OECA has identified a number of documents and web resources to assist the regions in implementing this priority area. For Permit Evaders, there are 26 compliance assistance web resources, and 1 enforcement resource. Visit [www.epa.gov/oeca/main/strategy/index.html](http://www.epa.gov/oeca/main/strategy/index.html) or [www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse) (see the MOA button on the left margin) for easy access to these resources. (Contact: Emily Chow (202) 564-7071.)



**Petroleum Refinery Sector Continues as a National Compliance and Enforcement Priority for the Years 2002/2003: Exit Strategy Described**

*PETROLEUM  
REFINING  
(SIC 291)*

**Priority Activities:** EPA's petroleum refinery initiative has several components, two of which have and will involve direct regional participation: slotted guidepoles and targeted investigations.

Our major effort has been and continues to be on targeted investigations. Our investigative strategy has evolved to address four "marquee" air issues: 1) PSD/NSR; 2) LDAR; 3) benzene waste and 4) flaring/NSPS. EPA has reached corporate-wide settlement agreements with several major refining companies that address each of these issues at all of their refineries ("global settlement"), collectively representing over 35 percent of total domestic refining capacity. Additional companies are in various stages of settlement negotiations. Continuing activities will be: (1) conclude all company-wide settlement negotiations; (2) complete Agency investigations; and (3) develop state capacity to begin investigations of companies/refineries that choose not to enter into (or back out of) settlement negotiations, especially in states with a large number of refineries (e.g. Texas and Louisiana).

The fifth issue, leaks from external floating roofs on storage tanks, has been addressed through a compliance incentive program for slotted guidepoles, the devices used on tanks to guide the motion of the external roof and sample the contents. The slotted guidepoles strategy has largely been implemented via a CAP-type program: over 300 facilities are participating in this program, installing controls and reducing emissions by over 13,500 tons per year. Despite repeated outreach efforts, it is anticipated that many other facilities could have, but elected not to, participate in this program. They should be targeted for inspection and possible enforcement action (e.g., non-participating refineries, marketing terminals, bulk storage terminals and chemical plants). While a separate inspection of these facilities might not be justified to address slotted guidepoles, the compliance status should be evaluated whenever an inspection otherwise occurs. OECA has developed the tools for evaluating and prosecuting such inquiries and actions.

**Selection Rationale:** Petroleum Refining has been an OECA priority since 1996. Significant emission violations have been discovered through the investigations. In all, most facilities outside of California are strongly suspected to be in violation for at least one of the four marquee issues. In order to continue progress and ensure a level playing field across the entire sector, more time is needed to complete the work in the sector.

**Timeframes: (*Exit Stage of the Strategy*)** Since over 80% of the refining capacity universe has either entered into global settlements, is engaged in global settlement negotiations or is under active investigation, during FY 2002/2003 the Agency is proposing to continue and complete any remaining corporate-wide negotiations and all pending federal investigations. Headquarters and the regions will continue efforts to build state capacity for investigations to enable states to

investigate smaller refineries and refining companies that were not reached by or under the national initiative. As needed, the Agency will follow up on previous actions and work with states.

### **Performance Expectations for the Petroleum Refining Sector**

Each region should:

- Include an evaluation of slotted guidepole compliance at all facilities likely to have slotted guidepoles at petroleum liquid vessels subject to NSPS Subpart Ka/Kb that did not participate in the Storage Tank Emission Reduction Partnership Program;
- Complete all pending marquee issue investigations by the end of FY 2002;
- Initiate and complete marquee issue investigations at those refineries that are potentially high priority enforcement targets (HQ will aid the regions in identifying possible “targets”);
- Participate actively in company-wide settlement negotiations and national investigations of identified petroleum refining companies;
- Regions should consider innovative CAP-type programs and encourage voluntary disclosures through use of EPA's September 30, 1999 reduced penalties policy that allows disclosures of violations discovered during the non-routine review of prior applicability determinations; and
- Develop state capacity (as necessary) to investigate marquee issues and encourage these states to investigate these issues at petroleum refineries.

Measures:

1. Emission reductions that result from commitments in settlements or as a result of enforcement actions for CAA violations of NSR/PSD, LDAR, Benzene Waste-NESHAP and/or flaring/NSPS.
2. Number of facilities that commit to undertake each of the following compliance actions/injunctive relief as a result of enforcement:
  - Permit applications received for NSR/PSD;
  - Emissions reductions/controls installed for NSR/PSD, LDAR, Refinery Fuel Gas, Benzene Waste;
  - EMS auditing for refineries;
  - Industrial process changes;
  - Storage/disposal changes.
3. Emission reductions that result from commitments made in self disclosures cases for CAA violations of NSR/PSD, LDAR, Benzene Waste-NESHAP and/or flaring/NSPS.
4. Number of marquee issue investigations initiated and concluded with respect to NSR/PSD, LDAR, Benzene Waste-NESHAP and/or flaring/NSPS.

**Available Resources:** OECA has identified a number of documents and web resources to assist the regions in implementing this priority area. For the Petroleum Refinery Sector, there are 41 compliance assistance web resources, and 2 enforcement resources. Visit [www.epa.gov/oeca/main/strategy/index.html](http://www.epa.gov/oeca/main/strategy/index.html) or [www.epa.gov/clearinghouse](http://www.epa.gov/clearinghouse) (see the MOA button on the left margin) for easy access to these resources. (Contact: Emily Chow (202) 564-7071.)

***Metal Services - This Sector Will No Longer be a National Priority in FY 2002/2003***

***METAL  
SERVICES***

**Reclassification as a Regional, State or Local Priority:** The metal services industry is subject to a very broad spectrum of Federal environmental statutory and regulatory requirements, including air, water, and hazardous waste regulations. It is an important sector economically with a large number of facilities, potentially as high as 10,000, across the country. The majority of metal finishing job shops are small businesses. This sector also includes operations that are part of larger manufacturing facilities. The noncompliance problems typically found within the metal services industry generally arise from an inattention to various operating and maintenance requirements that prevent releases of pollutants. These noncompliance problems are often quite varied, depending on the size, sophistication, and technical and financial resources available to the facility. They rarely require the types of relief common to other national priority sectors, e.g. the capital-intensive technological remedies often required of the petroleum refining and coal-fired power plant sectors. OECA has concluded that the metal services industry is best addressed by regional, state and local programs that are likely to achieve better sector-wide compliance at reduced costs. These programs are well-equipped to determine the appropriate mix of compliance assistance programs and strategically targeted enforcement actions that will achieve the best results in their area.

**Priority Activities:** Prior to and continuing through FY 2000 and 2001, EPA has been conducting extensive compliance assistance activities for the metal services sector. These activities have included providing approximately one million in funding for the National Metal Finishing Resource Center (NMFRC) since 1995; publishing the Metal Finishing Guidance Manual - a plain language multimedia compliance tool for shop floor managers; publishing a plain language guide to the Chromium Electroplating MACT; developing a Halogenated Solvent expert system; developing a compliance video; and holding numerous workshops for individuals within the metal services sector. EPA has also undertaken a number of enforcement activities including several regional initiatives and a national Nitrate Initiative. Metal finishers, a subset within the broader metal services sector, were one of six industrial areas upon which EPA focused an audit/self-disclosure initiative to improve communities' right-to-know.

**Performance Expectations:** The metal services sector will no longer be a national enforcement and

compliance assurance priority for FY 2002/2003. OECA will continue to support compliance assistance activities such as the NMFRC and to initiate national enforcement and/or compliance assurance activities when significant noncompliance issues are discovered. EPA regional offices are encouraged to coordinate with state and local agencies and develop and/or continue their own enforcement and compliance assistance strategies for the metal services industry. OECA will also consider placing particular problem areas of the sector within other existing MOA priorities such as the RCRA Permit Evaders or the Air Toxics priorities, both of which will be continued through FY 2002/2003.

**Timeframes:** Appropriate EPA and state/local enforcement and compliance assistance activities will continue (or be initiated) throughout FY 2002/2003. Regions which continue work in this sector are to assess their progress at the end of each fiscal year.

## **REGIONAL PRIORITIES**

In addition to submitting brief overviews of what they are doing to implement the national priorities, the regions should also submit a brief narrative outlining each of their top regional priorities. (See Attachment 3 for specific MOA reporting format instructions.)

## **CORE PROGRAM**

### ***REVAMPED***

#### ***CORE***

EPA is committed to the concept that maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. Recognizing the magnitude of maintaining both the core program and devoting a substantial amount of resources to national, regional and state priorities, OECA acknowledges that the regions may need to make adjustments within their core program. The collaborative efforts of a regional/Headquarters workgroup to revamp the core is reflected in Attachment 7. Based on current proposed budget allocations for FY 2002, it is anticipated that regions may need to make tradeoffs and resource cutbacks within the core, either within or across media programs.

### ***EXCEPTIONS- BASED***

#### ***REPORTING***

Regions need only report exceptions to the core program. In its discussion of the core program, the region should identify, by media or program area, any changes or tradeoffs to the core program across or within program areas, and provide an explanation. For more specific information on core activities and reporting see

Attachment 3, MOA Reporting Format and Instructions.

## **INSPECTION PROJECTIONS**

As in the past, regions are asked to provide projections of program activity for regional and state inspections and for addressing drinking water significant noncompliance by region and by state. Attachment 4 contains the definition and format for FY 2002 inspection projections and drinking water SNC. Please use these forms to enter inspection projections for the following media: NPDES, Pretreatment, RCRA (includes UST), TSCA (includes Lead), EPCRA, FIFRA, and Clean Air Act, and provide drinking water SNC rolling-base commitments. Completion of a Multimedia inspection projection chart, as well as a Statistically Valid Noncompliance Rate chart, are also being requested for FY 2002/2003. Please note that we are providing OECA contact persons for each of these projection charts.

## **RESOURCE INFORMATION**

### ***RESOURCE ACCOUNTING***

Attachment 5 presents the resource utilization charts which regions should complete as part of their FY 2002 MOA submission. The information requested is necessary to account for enforcement and compliance activities to support budget documents and meet GPRA requirements and to inform Congress and others as to resource allocations and results. Under GPRA, OECA no longer implements a budget at the media level, so these resource utilization charts provide an essential level of detail that OECA would not otherwise be able to obtain. OECA senior management is committed to using these numbers wherever possible to address budget and resource questions and during regional visits. For FY 2003, we expect to collect only exceptions-based resource information.

## **SUPPORT REQUESTS**

### ***DELIVERING SUPPORT***

Attachment 6 provides the information NEIC is requesting by June 22, 2001, to start their review and commitment process for specific regional support. Regions should submit this information directly to NEIC and begin discussions to allow for final agreements from NEIC during the negotiation phase immediately following the September 4, 2001 due date for the FY 2002/2003 MOA. In addition, regions should include their requests for Headquarter's guidance and training support in their national and regional priority narrative, where appropriate. Requests for FTE and extramural funding should be requested through a separate process, similar to the process used during FY 2001. The National Enforcement Training Institute

(NETI) training course outline is also included in this attachment.

**ATTACHMENTS:**

Attachment 1: EPA Goal 9 Objectives and Sub-Objectives

Attachment 2: FY 2002 Annual Performance Goals and Measures and Accountability Measures

Attachment 3: MOA Format and Instructions, Negotiation and Reporting Schedule

Attachment 4: Inspection Projection Forms

Attachment 5: FTE Resource Charts

Attachment 6: NEIC Support Call Request and NETI training course outline

Attachment 7: Revised OECA Core Guidance

**EPA STRATEGIC GOALS AND OBJECTIVES: Goal 9**

Goal 9: A Credible Deterrent to Pollution and Greater Compliance with the Law

Objective 1: EPA and its state, tribal, and local partners will improve the environment and protect public health by increasing compliance with environmental laws through a strong enforcement presence.

Sub-obj. 1: EPA and its partners will improve compliance with environmental laws where there are patterns of noncompliance or significant risks to human health or the environment, by maintaining a strong enforcement presence.

Sub-obj. 2: EPA and its partners will improve targeting and compliance monitoring to ensure that activities are conducted where there are high risks to human health or the environment, patterns of noncompliance or disproportionately exposed populations.

Sub-obj. 3: EPA will implement international commitments for enforcement and compliance cooperation with other countries especially along the U.S. border (Mexico/Canada).

Objective 2: EPA and its state, tribal, and local partners will promote the regulated community's compliance with environmental requirements through voluntary compliance incentives and assistance programs.

Sub-obj. 1: Over the next five years, EPA will complete settlements with approximately 1,000 facilities to voluntarily self-disclose to the Federal government and correct violations.

Sub-obj 2: By working with other compliance assistance providers, EPA and its partners will increase the understanding of environmental requirements through the development, distribution and use of compliance assistance tools.

Sub-obj. 3: EPA will review all major proposed Federal actions under the National Environmental Policy Act (NEPA) and achieve successful mitigation of at least 70% of adverse environmental impacts through interagency negotiations.

**FY 2002 Annual Performance Goals and Measures and Accountability Measures****GOAL 9: A Credible Deterrent to Pollution and Greater Compliance with the Law**

**Objective 1:** EPA and its state, tribal, and local partners will improve the environment and protect public health by increasing compliance with laws through a strong enforcement presence.

**Annual Performance Goal:**

EPA will direct enforcement actions to maximize compliance and address environmental and human health problems; 75% of concluded enforcement actions will require environmental or human health improvements such as pollutant reductions and/or changes in practices at facilities.

**Performance Measures:**

75% of concluded enforcement actions require pollutant reductions and/or changes in facility management or information practices.

300 million pounds of pollutants reduced (aggregate).

Increase or maintain existing compliance rates or other indicators of compliance for populations with established baselines, or develop additional rates for newly selected populations.(core optional)

Reduce by 2 percentage points overall the level of significant noncompliance recidivism among CAA, CWA, and RCRA programs from FY 2000 levels.

Increase by 2 percentage points over FY 2000 levels the proportion of significant noncomplier facilities under CAA, CWA, and RCRA which returned to compliance in less than two years. (core required)

Produce report on the number of civil and criminal enforcement actions initiated and concluded.

**Annual Performance Goal:**

EPA will conduct 15,000 inspections, 400 criminal investigations, and 200 civil investigations targeted to areas that pose risks to human health or the environment, display patterns of non-compliance or include disproportionately exposed populations.

**Performance Measures:**

Number of criminal investigations.

Number of civil investigations.

Number of EPA inspections.

Five percent of mutually agreed-upon high-priority facilities in Indian Country will have been the object of minimum core compliance monitoring program.



**Annual Performance Goal:**

Ensure compliance with legal requirements for proper handling of hazardous waste imports and exports.

**Performance Measures:**

Review and respond to 100% of the notices for trans-boundary movement of hazardous wastes, ensuring their proper management in accordance with international agreements.

**Annual Performance Goal:**

Improve capacity of states, localities and tribes to conduct enforcement and compliance assurance programs. EPA will provide training as well as assistance with state and tribal inspections to build capacity, including implementation of inspector credentials program for tribal law enforcement personnel.

**Performance Measures:**

Conduct 150 EPA-assisted inspections to build capacity.

Number of EPA training classes/seminars delivered to states, localities and tribes to build capacity.

EPA will make a decision on issuance of inspector credentials to qualified tribal members within 60 days after completing the training requirements.

NETI will train 95 Tribal personnel.

NETI will provide tribal governments with 50 computer-based training (CBT) modules.

Total number of state and local students trained.

**Annual Performance Goal:**

Maintain and improve quality and accuracy of EPA's enforcement and compliance assurance data to identify noncompliance and focus on human health and environmental problems.

**Performance Measure:**

Field test Integrated Compliance Information System (ICIS) Phase I, retire Docket system and complete design and development of ICIS Phase II.

Complete Quality Management Plan (QMP) project for an additional 3 data systems.

Begin development and system testing for modernized Permit Compliance System (PCS) system.

Continue operation and maintenance/user support of 14 information systems housing national enforcement and compliance assurance data with a minimum of 95% operational efficiency.

Conduct 4 analyses of environmental problems in Indian Country using EPA's baseline assessment survey.

**Objective 2:** EPA and its state, tribal, and local partners will promote the regulated community's compliance with environmental requirements through voluntary compliance incentives and

assistance programs.

**Annual Performance Goal:**

Increase opportunities through new targeted sector initiatives for industries to voluntarily self-disclose and correct violations on a corporate-wide basis.

**Performance Measures:**

Complete settlements with 500 facilities to voluntarily self-disclose to the Federal government and correct violations.

**Annual Performance Goal:**

In FY 2002, review all major proposed Federal actions subject to the National Environmental Policy Act (NEPA) and achieve successful mitigation for at least 70% of the adverse environmental impacts resulting from those actions.

**Performance Measures:**

70% of significant impacts identified by EPA are successfully mitigated.

**Annual Performance Goal:**

Review and document 100% of water treatment facility grants and water discharge permits subject to National Environmental Policy Act.

**Performance Measures:**

100% of water treatment facility grants and water discharge obligations are met.

**Annual Performance Goal:**

Promote the use of Environmental Management Systems (EMS) to address known compliance and performance problems.

**Performance Measures:**

Increase EMS use by developing tools, such as training and best practice manuals that encourage improved environmental performance and conduct research and evaluation of EMSs.

**Annual Performance Goal:**

Increase the regulated community's compliance with environmental requirements through their expanded use of compliance assistance. The Agency will continue to operate small business compliance assistance centers and develop compliance assistance tools such as sector notebooks and compliance guides.

**Performance Measures:**

Develop 150 compliance assistance tools.

Add all new EPA compliance assistance materials to the Clearinghouse within 30 days of

issuance.

Reach 500,000 facilities, states, or technical assistance providers through targeted compliance assistance (core optional).

Agency will reach 30 tribally owned/managed entities through targeted compliance assistance.

Increase the use of Sector Facilities Indexing Project website user sessions over FY 2000 levels.

**FY 2002 Accountability Measures for Enforcement and Compliance Assurance<sup>1</sup>**

1. Environmental and/or public health benefits achieved through concluded enforcement activities, e.g., case settlements, injunctive relief, etc.  
*Pilot measure: Volunteer states will be sought to participate with EPA in pilot test use of Case Conclusion Data Sheet or comparable approaches to analyzing benefits achieved from enforcement activities.*
2. Rates of significant noncompliance for selected regulated populations.  
*All states continue to provide facility-specific compliance information through automated data systems. Volunteer states will be sought to participate with EPA in development of statistically valid compliance rates.*
3. Percentage of significant non-compliers (SNCs) that have been returned to compliance or otherwise addressed.  
*All states continue to provide facility-specific compliance information through automated data systems.*
4. Results of using State alternative compliance approaches (e.g., audit laws or policies, small business compliance policies, XL projects) and compliance assistance.  
*Pilot measure: Volunteer states will be sought to provide EPA with data on evaluation of the results of compliance incentives and compliance assistance efforts. Provide narrative description of alternative compliance approaches.*
5. Total number of inspections conducted at major facilities, and the percent of total universe of regulated sources inspected in negotiated priority areas (e.g., industry sectors, geographic areas).  
*All states continue to report facility-specific data through automated data systems. Negotiate means for reporting information on inspections of facilities not covered by current data systems.*
6. Enforcement actions (e.g., case referrals, orders, notices) taken, by media.  
*All states continue to provide facility-specific compliance information through automated data systems.*
7. Number of facilities/entities reached through each type of compliance assistance activity.  
*Pilot measure: Volunteer states will be sought to participate with EPA in pilot to provide data on compliance assistance activities. Describe any current reporting a pilot State does on compliance assistance activities.*

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<sup>1</sup> As stated in the 1997 *Joint Statement on Measuring Progress under NEPPS*, “Beyond core performance measures, there are other program output and fiscal reporting requirements we must use to document our various program activities.” States are expected to continue reporting this routine program and fiscal tracking information. At the same time, States and EPA Regions are encouraged to work together to review the value and cost of these data exchanges and eliminate low-priority reporting.

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## MOA Format and Instructions, Negotiation and Reporting Schedule

### A. *FORMAT*

The following MOA format is provided to ensure a consistent presentation across regions. Regions should use their MOA to briefly articulate how they will implement national priorities, and how they will implement top regional priorities. All regions should use this standard format and submit their MOAs electronically to Robert Tolpa by September 4, 2001.

#### I. Introduction

Regions should provide a short overview (**1-2pps.**) which identifies regional themes, broadly lays out program directions, and describes their overall approach and philosophy to using a mix of traditional and innovative tools to address environmental and noncompliance problems.

#### II. National Priorities

Regions should provide a brief discussion (**1-2pps. for each national priority**) of how their activities will contribute to the achievement of national goals and objectives. Regions should report their activities for each national priority, identifying the following:

- a. Specific Priority
- b. Activities and tools, unique regional measures, goals and outcomes, and tradeoffs
- c. Rationale if the region proposes not to participate in the priority
- d. Headquarters support requests (for guidance and training needs only).

#### III. Regional Priorities

Regions should provide a brief discussion (**1 page for each regional priority**). Specifically, the region should address the following:

- a. Specific Priority
- b. Activities and tools, unique regional measures, goals and outcomes, and tradeoffs
- c. Headquarters support requests (for guidance and training needs only).

#### IV. Exceptions and Changes to the Core Program

In this section for FY 2002/2003, the region should identify by media or program area, any *major* exceptions, changes or tradeoffs to the core program, within or across program media, which it expects to make, and provide an explanation for those changes. OECA will assume that regions are maintaining the existing core program except where the regional MOA identifies changes or tradeoffs that are necessitated by implementation of national or regional priorities.

#### V. Inspection Projections

Regions are required to provide in their MOA, performance **projections** for the annual media-specific inspections, drinking water SNC, a multimedia chart, and a statistically valid non-compliance inspection chart. Attachment 4 contains the definitions and format for completing this information, complete with contact names for each chart.

#### VI. Resource Information

Regions should review the resource charts which Headquarters will provide individually to each region as part of the Final FY 2002/2003 Guidance. These charts will show the final FY 2000 regional Operating Plan numbers. Each Region will be asked to review and revise the charts to reflect their current staffing distribution, and fill in the FY 2001 Regional resource information and the FY 2002 proposed column. Each Region will receive a disk that will provide their specific information on goal 9 as part of this guidance. Attachment 5 provides more detailed resource information reporting instructions.

#### VII. Headquarters Support Requests

Any regional Headquarters' support requests should be included, where appropriate, in national and regional priority narrative as a separate element (see II.d and III c. above). These requests should only be requested for guidance and training needs, since extramural and FTE funding requests are handled through a separate solicitation process. Regions may, however, want to point out where, if they don't receive these funds through the separate process, they may not reach their anticipated goals for a specific national or regional priority.

#### ***B. Schedule for Developing and Negotiating FY 2002/2003 MOAs***

- Publish final MOA Guidance in June.
- Submit draft regional MOAs to Headquarters no later than September 4, 2001.
- Headquarters will review and negotiate MOAs within two months of receipt (November, 2001).
- Headquarters will consult with the regions in November/December, 2001 about whether changes or revisions should be made in priorities or guidance for FY 2003, the second year of the MOA.

## REPORTING FORMS FOR FY 2002 PROJECTIONS

- NPDES/PRETREATMENT
- DRINKING WATER SNC
- RCRA
- TOXICS
- EPCRA
- AIR
- FIFRA
- Statistically Valid Noncompliance Rates
- Multimedia Inspections

Please use the attached forms to enter regional and state projections. Information comprising both regional and state activities provide key information necessary for national program planning, management, and implementation. Given the timing of state negotiation cycles, however, state projections may be estimates. If necessary, these state estimates can be adjusted during the mid-year reporting process. (State projections for the EPCRA program are not necessary.)

**NPDES/PRETREATMENT INSPECTIONS**

This measure tracks, against semi-annual targets, the number of inspections of major NPDES facilities; Class I facilities receiving sludge management inspections; and pretreatment POTWs receiving compliance inspections; and the number of inspections of significant industrial users (SIUs) discharging to POTWs without approved programs in unapproved states.

Regions and states must maintain an effective inspection program, and the strategy for ensuring this in every state should be defined in the MOA. It is an Agency goal to provide 100% coverage of all major NPDES facilities (or equivalent coverage of a combination of major and priority minor facilities) and 100% of POTWs with approved pretreatment programs in unapproved states. Where EPA is the pretreatment control authority, Regions should evaluate each SIU file and follow-up with the field investigations at 100% of the SIUs with violations identified in their periodic reports, or where the Region believes that the SIU discharge may adversely impact POTW operation, effluent quality, or receiving water quality. Regions should focus inspections in Clean Water Act priority areas as defined in the MOA. Regions may shift a portion of their total inspection resources from major to minor facilities, particularly in priority watersheds or facilities discharging to impaired waters (e.g., fish advisories, shellfish bed or beach closures, drinking water sources). Since an inspection at a major facility generally requires more resources than an inspection at a minor facility, inspection tradeoffs, that is the number of minor facilities substituted for major facilities, should generally be a 2:1 ratio or greater. This ratio is based on previous workload models which averaged the amount of resources needed to conduct major and minor inspections. Additionally, as we focus on newer sources, such as SSOs, or on priority watersheds or impaired areas, such as beach closures, minor sources will be an important component of our inspection program. In addition, regions who are planning to conduct sludge inspections at the expense of other CWA core activities should provide a rationale for their investment in sludge inspections. Regions should report sludge inspections, where applicable, on the MOA form as part of the end-of-year report. Regions proposing to shift inspection resources from majors to minors must ensure that the necessary minor facility information and inspection data is entered into PCS, either by the region or state, in order to receive "credit." It is very important that minors data be reported into PCS to reflect our activities and show results. We now rely solely on minor data entered into PCS to evaluate and report results.

Inspections conducted by either EPA, the state, or other appropriate federal agency (such as the Mineral Management Service) will count towards coverage. Inspection coverage may be achieved by a mix of inspection types including Compliance Evaluation Inspections (CEIs), Compliance Sampling Inspection (CSIs), Biomonitoring Inspections (BIOs), Performance Audit Inspections (PAIs), Diagnostic Inspections (DIAGs), or Reconnaissance Inspections (RIs) for major NPDES facilities and pretreatment audits or pretreatment inspections for POTWs with approved pretreatment programs. Consolidated multi-media inspections can also count towards coverage. Multiple inspections at any one facility during the year will count as one permittee inspected. Reconnaissance Inspections may be counted toward the commitment only if the following criteria are met:

- (1) The facility has not been in SNC for any of the four quarters prior to the inspection.
- (2) The facility is not a primary industry as defined by 40 CFR, Part 122, Appendix A.
- (3) The facility is not a municipal facility with a pretreatment program.



When conducting inspections of POTWs with approved pretreatment programs, a pretreatment inspection component (PCI) should be added, using the established PCI checklist. A NPDES inspection with a pretreatment component will be counted toward the projection for majors, and the PCI will count toward the projection for POTW pretreatment inspections.

Proposed regional NPDES inspection projections should be provided within the Memorandum of Agreement between the region and OECA. Regions should provide the universe of majors and pretreatment POTWs, and SIUs along with semi-annual projection targets. The universe of permittees to be inspected consists of either those permittees designated as "majors" within the Permit Compliance System (PCS) or POTWs with approved pretreatment programs, also designated within PCS. Regions should use the chart for semi-annual reporting and provide the number of inspections conducted against targets and, where appropriate, a separate count of the number of sludge inspections conducted (a target has not been established for sludge inspections; this is a "report-only" requirement).

For further information on the NPDES inspection projection instructions, please contact Kathryn Greenwald (202/564-3252), in the Water Enforcement Division/ORE, or Peter Bahor (202/564-7029) and Julie Tankersley (202)/564-7002) in the Compliance Assessment and Media Programs Division/OC. For further information on pretreatment inspections please contact Kathryn Greenwald, or Walter Brodtman (202/564-4181) in the Agriculture Division/OC.

**FY 2002 NPDES AND PRETREATMENT INSPECTION PROJECTIONS**

NPDES INSPECTIONS		
REGION/STATE*	MAJORS	MINORS***
	<u>Universe**</u>  <u>Projection</u> # (%) <u>2 Q</u> <u>4 Q</u>	

- \* Universes and projections should be broken out by federal and state-by-state.
- \*\* For Region X, the universe number provided should exclude major placer miners.
- \*\*\* For minors provide an annual projection number.

### Pretreatment Inspections

Region/State	Universe of Approved Programs	Projected Audits & Inspections				Coverage Total = # (%)
		<u>2nd Q</u>		<u>4th Q</u>		
		A	I	A	I	

Region/State	Universe of SIUs (without approved programs in unapproved states)	Projected Inspections				Coverage Total = # (%)
		<u>2nd Q</u>		<u>4th Q</u>		
		I		I		

Note: This measure requires semi-annual projections for NPDES Inspections and Pretreatment Inspections. Projections for 4th quarter should be cumulative numbers. Projections are not required for Sludge Inspections. Semi-annual reporting is required for NPDES, Pretreatment and Sludge Inspections. The second pretreatment table only needs to be filled in by regions that have unapproved States (i.e., Regions I, II, III, V, VII, VIII, and IX).

**DRINKING WATER ROLLING-BASE SNC/EXCEPTIONS PROJECTIONS**

This measure requires each region to negotiate projections for the number of Drinking Water SNCs/Exceptions, off a rolling-base list, which will be appropriately addressed, either by state or federal action, or returned to compliance in a timely and appropriate manner so as to prevent these public water systems from appearing on a list of unaddressed SNCs (a.k.a, exceptions). This is a somewhat different projection than that asked for in prior MOAs in that with the exception of FY 2001, regions were required to negotiate from a fixed-base of SNCs identified at the beginning of the fiscal year.

Otherwise, we are employing a similar process for negotiating the projections as we have used in those prior years and as was set out in the MOA guidance. In prior years (except for the transition year of FY 2001 in the change from fixed-base to rolling-base), separate projections were negotiated for the Surface Water Treatment Rule (SWTR), Microbiological/Turbidity (M/T), and for Chemical/Radiological (C/R) SNCs and Exceptions. For FY 2002/2003, separate projections should be negotiated only for microbial SNCs and exceptions, as a group, and for chem/rad SNCs and exceptions, as a group. The projections will generally exclude the transient non-community public water systems. As indicated in the national priority section in the MOA guidance, OECA expects the regions/states to address 100% SNCs for the microbial rules; if not, the Region should provide an explanation. In general, if a state and/or region has a relatively small number of SNCs/Exceptions, we expect the state and/or Region to commit to address 100% of the systems. If the regional projection for C/R (including the lead/copper rule), and other non-TCR, non-SWTR microbial rules is less than 100%, an explanation must be provided explaining why the systems will not be addressed. It is possible that we will again in FY 2002/2003 have large numbers of lead/copper rule SNCs. If this is the case, and it is confirmed by Headquarters, we are prepared to negotiate C/R projections using the same guidance we used in FY 1998/1999, i.e. 100% of the large and medium systems and at least 85% of the small systems. A projection of anything less than 85% must be accompanied by a justification (not necessarily system-specific) explaining why the remainder will not be addressed. Please remember that in order to be counted towards the projection, the enforcement action must be taken or the return to compliance must occur by the end of the fiscal inspection year (i.e, June). Note that as in prior years, actions taken or returned to compliance reported in the fourth quarter of FY 2002 also count towards your projections.

It is our understanding, generally, that regions and states should have the resources to address the systems on the fixed base as well as other high priority systems that come up during the year. Where appropriate, substitutions will be allowed under the following conditions: (a) the region (and state) have more SNCs/exceptions on the fixed base than it can address with both regional and state resources; (b) the name of the system for which the substitution is being made, as well as the system which is the substitute, must be provided, in advance. The SNC definition has remained unchanged; refer to the FY 93 PWSS Compliance Report, dated March 1994, pages 43-44.

The contact for this projection is Andy Hudock (202/564-6032) of the Water Enforcement Division/ORE, or Ken Harmon in the Compliance Assistance and Sector Programs Division of OC (202/564-7049).

**RCRA REGIONAL PROJECTED COMPLIANCE MONITORING ACTIVITIES:**

*The following projection charts should be submitted with the draft MOA. Both tables need to be completed since they provide valuable information on different aspects of the national RCRA enforcement program. Table 1 shows where regional RCRA resources will be distributed among the priorities and universe types. Tables 2 shows how federal and state resources will be used to meet the core program requirements. The total number of regional inspection projections should be the same for both tables.*

*A completed chart for the region showing where inspections were conducted during the fiscal year will be submitted at the end of the year.*

**A. Regional Priority Inspection Projections**

## 1. Instructions for completing Table 1

- For the region, indicate the number of facilities where EPA activities are *projected* to occur in the fiscal year 2002.
- To avoid double counting between priorities, use the hierarchy of permit evaders and petroleum refining. For all other activities, list in order of importance to the regional RCRA program and use that as the hierarchy to count compliance monitoring activities once.
- To avoid double counting of facilities, use this hierarchy to count compliance monitoring activities once, e.g. an inspection planned for an LDF with an incinerator, credit one activity to the Incinerator column.
  1. Federal Facility (See 1. Special Factors)
  2. State and Local TSDF (3007(d))
  3. Incinerators
  4. Boilers and Industrial Furnaces
  5. LDFs
  6. TSFs
  7. Large Quantity Generators (LQGs)
  8. Small Quantity Generators (SQGs)
  9. Non-notifiers
  10. Transporters

RCRA Regional Projected Compliance Monitoring Activities - cont.

Facility Type	Federal Facility	State & Local TSDf 3007(d)	Inc	BIFs	LDFs	TSFs (non-combustion)	LQG	SQG	Non-Notifiers	Transporters	Other (used oil, tips, etc.)	Compliance Assistance Activities	TOTALS
Priority													
Permit Evaders													
- Waste-derived fertilizer													
- Bevill													
- Foundries													
- Other													
Petroleum Refining													
Other Priorities (please list in order of importance to the RCRA program)													
TOTALS													

**RCRA REGIONAL AND STATE PROJECTED CORE PROGRAM COMPLIANCE MONITORING ACTIVITIES - FY 2002**

*Compliance monitoring activities for the core program should be reported below for both the regions and states.*

- Indicate the number of facilities where regional and state activities are *projected* to occur in the fiscal year 2002. Regions should indicate the number of regional inspections that will be conducted in each state. Inspections commitments/projections should include ALL RCRIS evaluation types, except for the SNC determinations, SNN and SNY.
- To avoid double counting of facilities, use this hierarchy to count compliance monitoring activities once:
  1. Federal Facility (See 1. Special Factors)
  2. State and Local TSDf (3007(d))
  3. Treatment, Storage, and Disposal Facilities (TSDFs)
  4. Large Quantity Generators (LQGs)
  5. Small Quantity Generators (SQGs)
  6. Other (Facilities other than those listed in 1-5 above; i.e., non-notifiers transporters, used oil, etc.)

	<b>Federal Facility</b>	<b>State &amp; Local TSDf 3007(d)</b>	<b>TSDFs 3007(e)</b>	<b>Large Quantity Generators</b>	<b>Small Quantity Generators</b>	<b>Other (Non-notifier, transporter, used oil, etc.)</b>	<b>TOTALS</b>
<b>Total Regional Inspection Commitments (by State)</b>							
<b>Total State-by-State Inspection Projections</b>							

The contact for the RCRA and UST projection charts is Caroline Ahearn (564-4012), in the RCRA Enforcement Division/ORE, or Gregory Fried (202/564-7016) in the Compliance Assessment and Media Programs Division/OC.

**UST INSPECTION PROJECTIONS**

	UST Inspections at Federal Facilities	UST Inspections in Indian country	Other	Total UST Inspections
Regional UST * Inspections (by State)				
<b>Totals</b>				

*\* Please note that state UST inspection projections are not requested. Instead, report regional inspections by state and include all inspection information in one master chart. Please indicate the number of regional inspections conducted by the categories identified; also provide overall totals as well as totals by category.*

**1. Special Factors for Redirection of Statutorily Mandated Inspections at Federal Facilities.**

The Federal Facility Compliance Act (1992) amended RCRA Section 3007 (c) and requires EPA to conduct annual inspections at all Federal facilities. This has been interpreted as the Federal Treatment, Storage and Disposal Facilities (TSDFs) universe. Currently, there are 274 Federal TSDFs which should receive annual inspections by EPA or authorized states.

In order to meet the statutory intent of the 1992 Act while providing the maximum disinvestment flexibility to the regions and states, inspections at Federal TSDFs should be redirected to Federal Large and Small Quantity Generators (LQGs/SQGs) and/or Civilian Federal Agencies (CFAs) such as: Department of Interior, Department of Transportation, Veterans Administration, etc. only if the following criteria are met:

- 1) Federal TSDF has received annual EPA/state inspection within the last five fiscal years.
- 2) Federal TSDF is not a High Priority Violator (HPV).
- 3) Federal TSDF has no open or unresolved enforcement actions.

Satisfying the three (3) above mentioned criteria should provide Regions and states justification for the disinvestment in inspections of Federal TSDFs. The shift in investment to Federal LQGs, SQGs, and/or CFAs should still meet the Congressional intent of the 1992 Act.

**TSCA INSPECTION TARGETS**

Please fill in projected numbers for each category in the chart below.

<b>REGION/ PROGRAM</b>	Core TSCA (§§4,5,8,12, 13)	PCBs	Lead 1018	Lead 402/404	Lead 406	Asbestos	TOTAL TSCA Inspections
Regional Federal							
State-by-State							

If you have any questions regarding PCBs or core TSCA inspection projections reporting please contact Gerald Stubbs (202/564-7043) of the Toxics and Pesticides Enforcement Division/ORE. For core TSCA questions, please contact John Mason (202/564-7037) of the Compliance Assistance and Sector Programs Division/OC. For PCB questions, please contact Joanne Callahan (202/564-5009) of the Compliance Assistance and Sector Programs Division/OC. For the lead program, please contact Carl Eichenwald (202/564-4036) of the Toxics and Pesticides Enforcement Division/ORE or Fran Jonesi (202/564-7043) of the Compliance Assistance and Sector Programs Division/OC.



**EPCRA INSPECTION TARGETS:**

Please fill in projected numbers for each category in the chart below. Please note: If a region conducts a combined EPCRA inspection, for example a joint 313/304 inspection, then it should be counted as 1 inspection. The region should footnote which sections of EPCRA that the joint inspection covered.

REGION/PROGRAM	EPCRA §313 non-reporter Inspections	EPCRA §313 Data Quality Inspections	EPCRA §304 CERCLA §103 Inspections	EPCRA §311/312 Inspections	Total EPCRA Inspections
Regional Federal					

For further information on this projection, please contact Carl Eichenwald (202/564-4036) of the Toxics and Pesticides Enforcement Division/ORE, or John Mason (202/564-7037) and Sally Sasnett (202/564-7074) of the Chemical, Compliance Assistance and Sector Programs Division in the Office of Compliance.

**CLEAN AIR ACT INVESTIGATION AND INSPECTION COMMITMENTS FOR FY 2002**

Please fill in the following table to reflect regional and state-by-state investigation commitments for the air program.

Investigation Type/ Region and state	Number of NSR or PSD Investigations	Number of Other Investigations
Region		
State-by-state		

Please fill in the following table to reflect regional and state-by-state inspection commitments for the air program. Note that the total number of inspections should equal the sum of all other inspection categories. Although CMS identifies a 2-year planning cycle, Full Compliance Evaluation commitments are required to be made annually.

Inspection Type/ Region and State	Total Number of Full Compliance Evaluations	Major Source Full Compliance Evaluations	Synthetic Minor Source Full Compliance Evaluations	* Other Source Full Compliance Evaluations	Number of Stack Tests Conducted
Region					
State-by-state					

\* All Full Compliance Evaluation commitments negotiated as alternatives to the major and 80% Synthetic Minor source commitments.

**CLEAN AIR ACT TITLE V CERTIFICATION COMMITMENTS**

Please fill in the following table to reflect regional Title V Certification Review commitments for the air program.

Certification Type/region and state	Number of Initial Title V Certifications	Number of Annual Title V Certifications
Region		
State-by-state		

If you have any additional questions regarding air inspection projection reporting, please contact Mario Jorquera (202/564-1079) in the Air Enforcement Division in the Office of Regulatory Enforcement or Scott Throwe (202/564-7013) in the Compliance Assessment and Media Programs Division of the Office of Compliance.

**FIFRA INSPECTION TARGETS:**

Please fill in projected numbers of each category in the chart below. Please refer to the FY95 Pesticide Enforcement Cooperative Agreement Guidance, Appendix II for a complete discussion of reporting definitions.

<b>Pesticides Enforcement Cooperative Agreement Output Projections</b>												
<b>Inspection Projections State-by-State</b>	Agricultural		Nonagricultural		Experi- mental Use	Producing Estab- lishment	Market- Place	Imports	Export	Certified Applicator Records	Use Restricted Pesticide Dealers	Total
	Use	Follow up	Use	Follow up								

For further information on reporting for this projection, please contact Carl Eichenwald (202/564-4036) of the Toxics and Pesticides Enforcement Division/ORE, or Jack Neylan (202/564-5033) in the Agriculture Division of the Office of Compliance.

**FY 2002 MOA  
INSPECTION COMMITMENTS FOR STATISTICALLY VALID NONCOMPLIANCE RATES**

The inspections for the noncompliance rates efforts are prescribed by population (sector and regulation). Because this list is more specific, in fact a subset, of the inspections delineated in the other MOA inspection charts, a separate form is required for the noncompliance rates inspections.

This table is to be completed and submitted with your FY 2002 MOA submittal due in September 2001.

<b>Region _____ FY 2002 Inspections for Statistically Valid Noncompliance Rates Effort</b>	
<b>Population (Sector/Regulation)*</b>	<b>Number of Projected Inspections**</b>
Ethylene Oxide Commercial Sterilizer MACT	
Combined Sewer Overflow Compliance with 9 Minimum Controls	

\*Inspection plans, and a list of facilities for each identified population will be provided to the regions in July.

\*\*Projected inspections includes entire sample which will be 75% targeted inspections and the rest random.

If you have any additional questions regarding this reporting process, please contact Lynn Vendinello (202/564-7066) of the Office of Compliance.

**MULTIMEDIA INSPECTION PROJECTIONS**

This measure requires each region to provide its projected number of consolidated and coordinated multimedia inspections. These projections will assist us in ensuring that each region’s multimedia targeting strategy and operational plan are integrating a cross-program/multimedia perspective into all stages of environmental enforcement planning and decision-making. These inspections will encourage application of multimedia/cross-program enforcement approaches to achieve additional health and environmental protection results, deterrence, and efficiency which could not have been achieved by traditional single-media approaches alone.

While we are not requesting projections of single media inspections that utilize a multimedia checklist, we will continue to request those totals as part of the end-of-year accomplishments reporting. For reporting purposes CERCLA §103 and EPCRA §304 are considered the same program.

For further information on this measure, contact Philip Milton (202/564-5029) in the Multimedia Enforcement Division of the Office of Regulatory Enforcement.

Multimedia Inspection Projections		
Region	Inspection Type	Projection
	Consolidated <sup>1</sup> multimedia inspections	
	Coordinated <sup>2</sup> multimedia inspections	

<sup>1</sup>A consolidated inspection occurs when a single inspection covers two or more programs under different statutes (for reporting purposes CERCLA §103 and EPCRA §304 are considered the same program). A consolidated inspection might be conducted by one fully trained inspector. Single program inspections using a multimedia checklist should not be credited as a consolidated inspection.

<sup>2</sup>To count as a “coordinated” inspection or action, no more than three months may have elapsed between inspection by one program and subsequent inspection by another program. The coordinated inspection must be a result of prior collaboration and planning between programs or based on information obtained during the initial inspection.

### Resource Information

The attached resource charts are very similar to the charts completed as part of the FY 2000 MOA process. The charts are organized by goal, objective and sub-objective and then cross-walked to the media program elements.

Reading the chart, organized by sub-objective and subsequent media-breakouts, from left to right:

First column:

2000 Final - This column of information was provided by each region in their previous MOA cycle and may also be found in the Budget Automation System (BAS). This column is being displayed for presentation purposes and Headquarters will provide each region their chart containing FY 2000 resource numbers via a separate disk.

Second column:

2001 Final - This column of information should represent each region's budget allocation, derived from the Agency's FY 2001 Enacted Operating Plan. It was originally provided to your Budget Officers from ARMSS in November 2000 and is also accessible via the Budget Automation System (BAS). Regions are being requested to fill in this column with final regional FY 2001 resource numbers.

Third column:

2002 Proposed - This column is blank and the information is to be provided by the regions in the FY 2002 MOA submittal package due in September 2001. Headquarters will provide the regions with FTE levels requested in the President's Budget during Phase I of the FY 2002 operating plan development in July. We recognize that FTE levels may change after the Agency receives the FY 2002 enacted budget after October 1. Therefore, Headquarters will work with the regions to determine a more appropriate FTE resource chart completion time frame.

### NEIC Support Requests

NEIC will continue to direct its new activities toward national and regional initiatives and priorities as described in the OECA MOA guidance and the regional MOAs. NEIC project selection will also be guided by the Administrator's themes, the Agency Strategic Plan, GPRA, and the national goals effort. NEIC activities will be focused on an enforcement/compliance end point. 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 unique capabilities (e.g., multi-disciplined teams, in-depth process evaluations, complex analytical procedures, etc.). As in the past, NEIC will continue to support ongoing projects to the extent commitments were made in FY 2001 or previous years, including case preparation and enforcement support.

To initiate discussions necessary to plan and schedule appropriate enforcement support for FY 2002, NEIC would like to receive requests from the regions by **June 22, 2001**. It is important that NEIC receive all regional submissions by June 22nd 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 MOAs.

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.

Gene Lubieniecki  
Civil Program Coordinator  
US EPA-NEIC, Denver Federal Center  
Building 53, PO Box 25227  
Denver, CO 80225

Robert Tolpa  
Chief, Planning Branch (2222-A)  
US EPA-OECA, Office of Compliance  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460



### NETI Training Course Outline

The National Enforcement Training Institute (NETI) is the division of OCEFT responsible for developing, coordinating and delivering training to federal, state, local and tribal lawyers, inspectors, civil and criminal investigators and technical experts in all phases of environmental enforcement. NETI was established by the 1990 Pollution Prosecution Act and is EPA's only Congressionally mandated training entity. NETI promotes a balanced training approach using traditional classroom training, distance learning tools such as computer-based training, and cooperative agreements with other organizations to reach a broad audience.

A complete list of NETI courses, their description and availability can be found at NETI's website (<http://www.epa.gov/oeca/neti>) or by calling 1-800-EPA-NETI.

During FY 2000, OECA offices and regional enforcement programs submitted their top Enforcement and Compliance training needs to NETI. As a result, NETI targeted its resources to meet these needs and encouraged OECA offices to support and facilitate the most pressing training needs where appropriate. In addition, regions allocated their resources to train personnel to address both core program related and specialized training needs. In a continuing effort to dedicate training resources to areas of both greatest need and benefit, attached is a list of the most frequently requested courses being provided through NETI, other OECA offices as well as training developed and delivered by regional offices. In reviewing the list, NETI is requesting that the regions respond to the following questions:

- Is it anticipated that the training courses listed will remain in high demand during FY 2002/2003?
- Is it anticipated that there will be a significantly increased demand for any courses during FY 2002/2003 currently offered by NETI but **not** included on the top request list?
- Is there an anticipation that the region will be developing and delivering **new** enforcement and compliance training courses during FY 2002/2003? If so, a brief description and proposed schedule is requested if available.
- What additional training courses are needed?

## **“GENERAL SKILLS TRAINING”**

**Requested by Regional and OECA offices with supporting proposals or deliverables reported  
TRAINING NEED**

**Advanced Negotiation Skills Training**

**Advanced Course on Economic Benefit of Non-Compliance**

**Advanced Inspector Training** (Includes interviewing, witness preparation)

**Alternative Dispute Resolution Skills -Basic**

**Alternative Dispute Resolution Skills -Advanced**

**Basic Inspector Tribal Training**

**Basic ABEL**

**Basic BEN**

**Basic PROJECT (SEP Analysis)**

**Basic Inspector Training:**

**Endangered Species Training**

**Enforcement Teamwork: Regulations to Resolution**

**Environmental Management Systems and Enforcement / Compliance-Focused Environmental Management Systems**

**Environmental Forensics**

**NPDES: EPA 1440 Occupational Health and Safety Training**

**Pollution Prevention for Enforcement and Compliance Officers**

## **“PROGRAM SPECIFIC TRAINING”**

**Requested by Regional and OECA offices with supporting proposals or deliverables reported  
TRAINING NEED**

**Administrative Hearings and Trials**

**CAA Air Toxics Training**

**CAA Case Development Training**

**Case Development Training for FIFRA/TSCA/EPCRA**

**CERCLA: Enforcement Process Training**

## **TRAINING NEED**

**Concentrated Animal Feedlot Operations**

**Environmental Law/Case Development Training**

**Iron and Steel Mini-Mills Sector Training**

**Lead (Pb) Inspection Training**

**National Data Base Maintenance Training**

**New Superfund Attorney Training**

**NSR/PSD Enforcement Training**

**Oil Pollution Act Training**

**PCS Advanced General Retrievals**

**Pesticide Use Enforcement Training Course**

**Petroleum Refining Training**

**PWS Audit Verification Training**

**RCRA Enforcement Practitioners Workshop**

**RCRA Inspector Training - Advanced**

**RCRA Inspector Training-Basic**

**Regulation of Radiation Materials Training**

**SPCC Inspection Training**

**Stormwater / Sanitary Sewer Overflow Enforcement Training**

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**What Every Superfund Attorney Should Know About Bankruptcy**

**Enforcement and Compliance Assurance Core Program**

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**1. INTRODUCTION TO CORE PROGRAM**

OECA is committed to the concept that maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. All Regional programs should adhere to the guidelines and expectations described in this Core program guidance.

While this guidance is used primarily to develop the regional MOAs, it also is used to initiate discussions with states about the use of program grant funds and work planning for FY 2002 and 2003. We expect these discussions will include a review of EPA and state priorities, with the goal of developing the best combination of those priorities. OECA believes that issues raised by states about the regional/state phase of the planning process need to be examined through an effort that OECA will convene in the near future.

### **A. Exceptions to the Core**

In the FY 2002/2003 MOA submission, regions need only report exceptions to the core program activities and expectations described in this guidance. Regions may make tradeoffs within the core, either within or across media programs. In its discussion of the core program, the region should identify, by media or program area, any changes or tradeoffs to the core program and provide an explanation. In completing this section of the MOA, the region should explicitly consider:

- whether its level of compliance assurance or enforcement activity is likely to dramatically change in any media;
- whether it will meet national guidance on timely and appropriate responses in all media;
- whether there are data input/timeliness problems with a particular data system;
- whether there are changes to its compliance monitoring program, e.g. to reflect a shift to conduct more resource intensive investigations rather than routine inspections; and
- whether the region will meet expectations set forth in the program specific descriptions which follow later in the document.

### **B. Cross-Program Core Activities**

Basic core program components apply across most of the specific program write-ups included in this guidance. These components include the following specific activities:

- follow the applicable program enforcement response policies (ERPs) and timely and appropriate (T&A) guidance (where these exist);
- follow OECA Nationally Significant Issues (NSI) guidance in all cases as applicable;
- promote OECA's compliance incentive policies (e.g., small business policy, audit policy), with the assistance of state/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;

- track compliance with consent decrees and with administrative orders and take all necessary actions to ensure continued compliance;
- insure that all required data is input into the national databases, where applicable, and complete and enter the case conclusion data sheets for all concluded actions; and
- reduce the backlog of administrative cases (i.e. settle or litigate cases issued in years prior to FY 2002, and ensure investigation and issuance of appropriate action for any open tips/complaints/ referrals received by EPA in years prior to FY 2002), and work with the Department of Justice and Headquarters to develop, file, prosecute, and settle outstanding judicial actions.

### C. 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.

The core compliance monitoring program is defined by a number of specific activities. Compliance monitoring is comprised of 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, etc). Compliance determinations are generally documented and filed using various methods (e.g., database, inspection report, etc.). 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 and sites, and ambient locations;
- reviewing and evaluating self-reported reports 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/inspection results into national databases;

- 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 potential environmental crimes through the civil compliance monitoring program, and assisting in bringing environmental criminals to justice;
- developing compliance monitoring tools such as inspection guides, checklists, or manuals;
- promoting the recommendations detailed in the OC guidance, “Role of the EPA Inspector in Providing Compliance Assistance,” dated July, 1997, for providing either Tier 1 or Tier 2 compliance assistance during compliance inspections;
- developing, negotiating, or overseeing state or tribal compliance and enforcement grants;
- providing training, assistance, support and oversight of state and tribal compliance inspectors;
  
- issuing, when appropriate, Federal credentials to state and tribal compliance inspectors;
- performing compliance screens for various Headquarters and/or state programs such as Performance Track, Project XL, etc.

It is expected that the regions, for each of their programs, will conduct many of these activities. 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.

*Reference: OECA's Office of Compliance, Compliance Monitoring Program Review Team Report, November, 1999*

#### **D. Compliance Assistance**

All regional programs should utilize compliance assistance, as appropriate, to help ensure that the regulated community understands regulatory obligations and how to comply with applicable environmental requirements. Regions should also track and measure the results of their compliance assistance activities.

One objective of compliance assistance is to achieve and advance regulatory compliance. Compliance assistance includes activities, tools or technical assistance which provide clear and consistent information for 1) helping the regulated community to understand and meet its obligations under environmental regulations; and 2) enabling compliance assistance providers with the ability to aid the regulated community in complying with environmental regulations. Compliance assistance may also help the regulated community find cost-effective ways to comply with regulations and/or go “beyond compliance” through the use of pollution prevention, environmental management practices and innovative technologies, thus improving environmental performance. The core national compliance assistance program consists of the following activities:

- conducting workshops/training, making presentations at meetings, developing compliance assistance tools, distributing outreach material, conducting on-site visits, providing telephone/hotline assistance;
- focusing compliance assistance efforts on targeted environmental problems, as well as on new rules, SBREFA rules or economically significant rules which apply in particular to small businesses and communities which often lack expertise to understand technical environmental regulations;
- using compliance assistance in integrated compliance assurance strategies, as appropriate;
- contributing planned regional projects to the annual Compliance Assistance Activity Plan;
- measuring the outputs of compliance assistance activities and outcomes of selected activities;
- reporting on compliance assistance activities (workshops/meetings/trainings; telephone hotlines; compliance tools developed and distributed; and on-site visits) in the Reporting Compliance Assistance Tracking System (RCATS);
- serving predominantly as a “wholesaler” of compliance assistance to enable other assistance providers to offer assistance directly to the regulated community. “Retail” or direct assistance should be focused on non-delegated programs and national/regional initiatives, as appropriate;
- promoting national compliance assistance tools and activities, such as the National Compliance Assistance Clearinghouse, the Compliance Assistance Centers and Compliance Assistance Forum;
- using compliance assistance materials in conjunction with the Small Business Compliance Policy and encouraging states to adopt EPA’s 1995 Small Communities Policy;
- coordinating with Headquarters, other EPA regions and other compliance assistance providers, such as states, on compliance assistance needs and activities to enable all providers to leverage resources;
- holding an annual regional stakeholder meeting(s) to obtain feedback on compliance assistance planning; and
- assisting in compliance assistance targeting and data analysis, e.g., in selecting sectors that need assistance and developing compliance assistance materials.

Regions should undertake these compliance assistance activities strategically, employing integrated planning and use of compliance assistance tools, as appropriate, tracking the results and measuring the effectiveness of compliance assistance activities. Inspectors providing Tier I or Tier II compliance assistance during compliance inspections in accordance with the recommendations of the July, 1997 OC guidance, “Role of the EPA Inspector in Providing Compliance Assistance,” should refer to the Compliance Monitoring section of the Introduction to Core Program (p. 2) for further information.

## **E. Data Quality**

The Office of Compliance, Enforcement Planning, Targeting, and Data Division, is developing a comprehensive Data Quality Strategy that will improve upon the disparate approaches



previously used in order to provide a strategic vision and implementation schedule to assure that enforcement and compliance data can be used as an effective tool to manage our program and report on our accomplishments. The Data Quality Strategy will be the basis of the new Quality Management Plans that OC will be taking the lead on developing in FY 2002. This strategy will be developed in FY 2001 and will include such activities as:

- identification of key enforcement and compliance program data fields;
- developing standards for verification and validation of the accuracy of data being entered into key data fields in each data base;
- periodic random data audits and targeted data clean-ups; and
- updating guidance on the input and use of certain key data fields in each data base, including identifying where underlying media specific program guidance needs to be updated and/or revised.

#### **F. EPA State Relations**

Partnership with the states is a central component of the core program. In developing and maintaining strong partnerships with states, regions will jointly develop enforcement and compliance assurance priorities that consider national program, regional, and state priorities. These priorities should include strategies that use the full range of tools to improve environmental performance and ensure compliance with environmental requirements. Regions and states are also encouraged to include implementation of innovative projects such as Performance Track in their set of priorities. As outlined in the January 19, 2001 memorandum, "Enforcement and Compliance Operating Principles for the National Performance Track Program," as one of the incentives for participation in the first-tier Achievement Track, the Agency has committed to consider all participating facilities as "low priority for routine inspections." All regions are expected to incorporate this commitment into inspection targeting efforts, both in the context of regional targeting and in negotiating with state partners.

In support of the Agency's Achievement Track of the National Performance Track program, the regions (in concert with Headquarters offices and DOJ) are conducting compliance screens of all applicant facilities. The regional effort includes searches of Agency databases, follow-up on information found there, program by program inquiries about new information not yet accessible on databases. The region will assess the findings against the Performance Track entry criteria, and make recommendations as to the appropriateness of each facility's participation.

The following four areas of focus should be considered in working with states:

1. Joint Planning, Priority Setting, and Work Sharing

Regions and states should implement joint planning, priority setting, and work sharing to achieve efficient and effective identification of enforcement and compliance priorities, deployment of resources, coordination, and greater compliance, all of which will result in improved environmental performance. 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. The “Annual Compliance Assistance Plan”, issued in April 2001, is OECA’s guidance on planned compliance assistance activities.

## 2. Consultation on Enforcement and Compliance Assurance Activities

Ongoing consultation and communication between EPA and states is critical for a smooth working relationship. Regions and states should ensure that established processes and procedures for notification of inspections and enforcement actions in authorized and non-authorized programs, where applicable, are followed per the “no surprises” policy described in the 1986 Policy Framework and appropriate program specific policy. This includes discussing enforcement activities in priority sectors and the status of enforcement cases with state co-regulators.

## 3. Environmental Compliance Analysis and Assessment

EPA and states together should assess the general state of compliance and enforcement program implementation in all major program areas using EPA and state sources of information. Each region should meet with its states frequently to identify areas of significant environmental problems and of significant noncompliance, develop strategies to address these problems areas, and evaluate the effectiveness of those strategies. OECA will continue to assist regions in problem identification, strategy formulation and evaluation by providing information available from data systems and other sources on a periodic basis. EPA and states should also find opportunities to share information on compliance assistance activities. For example, one option for states to share compliance assistance information with EPA is to report to the Pollution Prevention Compliance Assistance Measurement System developed by the New England Waste Management Officials Association (NEWMOA).

## 4. Effective State Enforcement and Compliance Assurance Programs

Regions should work with states to develop enforcement and compliance assurance agreements. These may be stand-alone agreements or may be incorporated into grant work plans for categorical grants agreements, Performance Partnership Grants, and Performance Partnership 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 National Program guidance and follow EPA grant regulations, i.e., 40 CFR Parts 31 and 35. Reference should be made to the Core Accountability Measures (joint EPA/ECOS memorandum dated April 22, 1999). Some regions and states are piloting new enforcement and compliance assurance performance measures, which may be used in addition to or in lieu of the accountability measures after consultation with OECA.

## **2. & 3. CLEAN WATER ACT AND SAFE DRINKING WATER ACT PROGRAMS**

The “Water” Program encompasses six separate programs under both the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). 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 up front followed by a description of compliance and enforcement activities unique to each water program. Regions should also refer to information contained in the Introduction to Core Program (p. 1) for further detail on shared core program elements.

## **2. CLEAN WATER ACT PROGRAMS**

The following core program elements are shared by all of the CWA programs:

- Regions should implement existing national compliance and enforcement policy and guidance, e.g., the 1989 *National Enforcement Management System (EMS)*;
- Regions should consider all available data in implementing the compliance and enforcement activities described below;
- Regions and states must maintain an effective inspection program in each of the water program areas;
- Each violation deserves a response. Regions and/or states are expected to evaluate all violations, determine an appropriate response, per the EMS if applicable, and take that action. Regions should focus actions in the priority areas listed in the MOA while maintaining a presence in all water programs; and
- Regions/states are expected to take timely and appropriate actions against facilities in significant noncompliance (SNC). Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for Federal enforcement.

### **A. NPDES and Pretreatment Programs**

#### **Compliance Assistance**

Regions should refer to the Compliance Assistance section of the Introduction to Core Program (p. 3) for general information regarding these activities. In addition, regions should support and encourage state small community environmental compliance assistance programs that are consistent with EPA’s November 22, 1995 Policy on Flexible State Enforcement Responses to Small Community Violations.

#### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

## **Compliance Monitoring**

### (A) Inspections

#### (1) NPDES PROGRAM

It is an Agency goal to provide 100% coverage of all major NPDES facilities and POTWs with approved pretreatment programs or equivalent coverage of a combination of major and priority minor facilities annually. Regions should focus inspections in Clean Water Act priority areas as defined in the MOA. Regions may shift a portion of their total inspection resources from major to minor facilities, particularly in priority watersheds or facilities discharging to impaired waters (e.g. fish advisories, shellfish bed or beach closures, drinking water sources). Since an inspection at a major facility generally requires more resources than an inspection at a minor facility, inspection tradeoffs - that is the number of minor facilities substituted for major facilities - should generally be at a 2:1 or greater ratio. This ratio is based on previous work load models which averaged the amount of resources needed to conduct major and minor inspections. As we continue to focus on newer sources, such as SSOs, or on priority watersheds, minor sources are an important component of our inspection program. The region should briefly explain its inspection targeting process, particularly its rationale for trading off major inspections for minor inspections, in the MOA. Regions proposing to shift inspection resources from majors to minors must ensure that the necessary minor facility information and inspection data is entered into PCS, either by the region or the state, in order to receive "credit." It is very important that minors data be reported into PCS to reflect our activities and document results. We now rely solely on minor data entered into PCS to evaluate and report results.

#### **Biosolids**

Although sludge (or biosolids) is not an area of national priority for OECA, we recognize that some regions expend resources conducting sludge inspections. Therefore, regions who are planning to conduct additional sludge inspections at the expense of other CWA core activities should provide a rationale for their investment in this program. Regions should report sludge inspections along with other inspections, where applicable, on the MOA form as part of the end-of-year report.

#### **Performance Expectations**

Regions should make projections in the MOA for both state and Federal inspections, identifying the universe of NPDES majors, and projecting the number of majors and the number of minors to be inspected. The projections should be shown as Federal and state by state, as provided in the NPDES inspection chart attached to the MOA guidance.

#### (2) PRETREATMENT PROGRAM

In the pretreatment program, regions must insure coverage in approved programs as well as

those where EPA is the control authority. The goal is to annually inspect 100% of the POTWs with approved pretreatment programs in unapproved states. Where EPA is the control authority, regions should evaluate each SIU file (e.g., review the DMR and periodic compliance reports) and follow-up with field investigations at 100% of the SIUs with violations identified in their periodic reports, or where the region believes that SIU discharge may adversely impact POTW operation or effluent quality or may be impacting receiving water quality.

### **Performance Expectations**

Regions will make projections for both Federal (and state as appropriate) and report by state the number of inspections (and % of universe covered) in approved pretreatment programs and the number of investigations (and % of universe covered) in non-approved programs.

#### **(B) Discharge Monitoring Report (DMR) Review/Review of Permit Compliance System (PCS) Data**

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 Clean Water Act requirements.

### **Enforcement Actions**

Regions should refer to the Introduction to Core Program (p. 1) for general information regarding these activities.

### **Performance Expectations**

EPA will consider the following data that is currently reported into PCS: number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided by facility for those remaining on the Exceptions List. No more than 2 percent of all major facilities should be on the exceptions list at any one time. Regions not able to commit to this should identify this as an "exception" in their MOA submission and propose an alternative projection.

### **Program Leadership and Evaluation**

#### **Data Entry/Data Management**

There are two components to data management - (1) the programmatic data in the Permit Compliance System (PCS) and (2) the data required to be reported to Docket and in the case conclusion data sheets.

(1) DMR data entry in PCS will be monitored and all the required data elements (“WENDB”) are expected to be put in for majors. Where activities at majors have been traded off for activities at minors (e.g., inspections), regions and states are expected to input the PCS data for the minors.

If regions cannot maintain this level, the region should identify this as an “exception” to the core and indicate what level it will attain.

Headquarters will monitor regional/state data entry quarterly.

(2) Regions are expected to report to PCS and to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions.

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

The following activities are important to achieving the ongoing environmental goals of “no net loss” of wetlands and achieving a net increase of 100,000 acres of wetlands per year by 2005.

#### **Compliance Assistance**

Regions should target compliance assistance activities towards smaller landowners/farmers who may not fully understand the Section 404 program. Regions should closely coordinate these activities with the other Federal agencies which may be involved. In addition, regions should report on compliance assistance activities through RCATS.

#### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

#### **Compliance Monitoring**

Regions should have a process for identifying/targeting/inspecting and otherwise responding to illegal activities. Regions should continue to report quarterly to OECA/ORE/WED on 404 violations and investigations. Regions are expected to implement the new 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, NRCS, Fish and Wildlife Service, etc.).

**Performance Expectations**

Regions should project and manually report through “the shell” on the number of site visits/inspections in the 404 program. This will be Federal only, except Regions II and V should also submit numbers for state inspections/site visits for New Jersey and Michigan, as well as for Federal actions.

**Enforcement Actions**

Whenever appropriate in 404 and non-404 water enforcement settlements, regions should use supplemental environmental projects to restore and enhance wetlands and to create wetland mitigation projects.

**Program Leadership and Evaluation**

The Section 404 program does not have a national data system. Regional wetlands program managers, however, are expected to report to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions. Regions are also expected to report violations and responses quarterly to Headquarters (ORE/WED) using the existing format.

**Performance Expectation**

At midyear and in end of year reports, as appropriate, Regions will describe their review and evaluation of state programs, major findings, and any corrective actions initiated or planned. For Federal programs, regions should describe their program and any corrective actions they have initiated or planned.

**C. Oil Pollution Act (Section 311)**

The OPA program is a Federal only program, therefore, all enforcement activities are Federal and there is no state oversight component. OPA inspections take place under the responsibility of the Office of Solid Waste and Emergency Response (OSWER).

**Compliance Assistance**

Regions should refer to the Compliance Assistance section of the Introduction to Core Program (p. 1) for general information regarding these activities.

**Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

## **Compliance Monitoring**

Regions should refer to the Compliance Monitoring section of the Introduction to Core Program (p. 2) for general information regarding these activities.

## **Enforcement Actions**

While the OPA program does not have a formal EMS, Regions must have a program to identify violations, to prioritize violations for actions, and then to take appropriate actions. Regions are expected to comply with the Section 311 penalty policy. Regions who have prior Headquarters' approval may use the Section 311(b)(3) and Section 311(j) expedited enforcement program as a complement to their full administrative and civil judicial enforcement efforts.

## **Program Leadership and Evaluation**

Regions should routinely review the ERNS database on spills to ensure that all spills are being appropriately addressed.

## **3. SAFE DRINKING WATER ACT PROGRAM**

### **A. Public Water System Supervision (PWSS) Program**

OECA will be seeking input from the regions and from drinking water stakeholders to develop a strategy to implement the enforcement and compliance recommendations of the annual National Public Water System Compliance Reports, and how activities to support implementation can be incorporated into each region's MOA. The general recommendations are included in the descriptions below.

## **Compliance Assistance**

Regions should target compliance assistance towards smaller drinking water systems, especially those with part-time operators. Regions should work with the states to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform the required activities. The total coliform rule, historically the most violated MCL, is another area where compliance assistance to small systems can be expected to produce significant results. Here, regions should encourage distribution of compliance assistance materials during sanitary survey inspections, and circuit riders as means of detecting and avoiding the conditions that lead to microbial contamination. When compliance assistance is not effective, regions should pursue enforcement actions.

Regions should also focus compliance assistance on provisions of the Disinfectant



Byproducts Rule which will become effective in November 2001. This effort will include outreach and education programming to ensure that sources understand the requirements and assistance to help them develop the program and system changes needed to implement the new rule. We encourage regions to make use of the recently-established Local Government Environmental Assistance Network (LGEAN) as a ready source of compliance assistance information (both from EPA and from its non-governmental partners), and recommend marketing LGEAN to drinking water system operators as a compliance assistance tool. In addition, regions should report on compliance assistance activities through RCATS.

### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

### **Compliance Monitoring**

#### **(a) Inspections/Sanitary Surveys**

Regions and states should maintain an effective inspection/sanitary survey program. Inspection and sanitary surveys should be reported into RECAP. Since all but two jurisdictions have been granted primacy for the drinking water program, this activity is mostly a state activity. Regions with direct implementation programs (Regions III and VIII) and all regions which directly implement the program on Indian lands should report numbers of inspections completed.

(b) Review of data in the Safe Drinking Water Information System (SDWIS) and review of other information on compliance available to the region.

Regions with direct implementation programs are expected to input required data into SDWIS. This is especially important for regions with direct implementation programs on tribal lands. Data entry for those programs will be monitored quarterly. Regions are expected to routinely review data submitted by states to SDWIS and review other information available to them on a drinking water system's compliance status. No new reporting is required by this measure.

### **Enforcement Actions**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

#### **(a) Resolution of SNCs**

In evaluating Regional performance, OECA will look at: the number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining. Information needed to

support this is already reported in RECAP and is already required to be reported to SDWIS. Regions not able to commit to this should identify this as an “exception” in their MOA submission and provide an alternative projection.

(b) Implementation of the Safe Drinking Water Act Amendments of 1996

These amendments fundamentally changed the drinking water program by providing the Agency and the states new tools, for example, the State Revolving Fund and new enforcement authorities, including administrative order and penalty authority for Federal facilities. Headquarters and the Regions have developed implementation plans.

**Performance Expectations**

Regions will continue to implement the 1996 amendments consistent with the implementation plans and include Federal facilities as part of other identified drinking water priority activities; conducting EPA inspections at Federal facilities using the newly clarified authorities. Regions should also incorporate a Safe Drinking Water Act component in all regional multimedia inspections of Federal facilities as outlined in the Federal facilities core program section of this MOA guidance. When regions find violations, they should take enforcement action, as appropriate.

c) Targeting Activities

To ensure that water is safe to drink, the regions should evaluate the results of source water assessments and the unified watershed assessments in targeting some enforcement activities in FY 2002/2003 where sources of drinking water are contaminated or threatened.

**Program Leadership and Evaluation**

Regions and states are expected to ensure that all required data is input into SDWIS, including Federal facilities as applicable. Regions with direct implementation programs, including those 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.

**B. Underground Injection Control (UIC) Program**

**Compliance Assistance**

Regions should target compliance assistance efforts at Class V wells delineated in source water protection areas and other areas where the potential for groundwater contamination is high (e.g. fractured rock and karst areas; sole source aquifers). In addition, regions should refer to the Compliance Assistance section on the Introduction to Core Program (p. 3) for general information regarding these activities.

**Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) and the list of shared core program elements for the CWA Programs (p. 7) for general information regarding these activities.

### **Compliance Monitoring and Performance Expectations**

#### (a) Inspections

Regions should insure 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.

#### (b) Review of Compliance Information

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.

### **Enforcement Actions**

#### Resolution of SNCs

In evaluating Regional performance, OECA will look specifically at: the number of SNCs ; number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided. Regions not able to commit to this should identify this as an “exception” in their MOA submission and provide an alternative projection.

In addition, regions should refer to the Introduction to Core Program (p. 1) for general information regarding these activities.

### **Program Leadership and Evaluation**

There is no UIC national program data base; however, regions are expected to ensure that all required data is input into Docket and that case conclusion data sheets are completed and entered into Docket.

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

EPA and the public rely on pesticide manufacturers 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. Farm workers

using pesticides must be informed about exposure to pesticides that are used on agricultural crops and must be informed how to properly handle and apply pesticides.

### **Compliance Assistance**

In general, compliance assistance should be a focus in follow-up to the issuance of new or amended regulations, and will also be incorporated into FIFRA national sector initiatives.

For FIFRA, the National Agriculture Compliance Assistance Center will continue to develop and provide compliance assistance materials related to FIFRA, Worker Protection requirements, and other EPA requirements that impact the agricultural community. Regions should familiarize themselves with the material offered by the center and provide compliance assistance materials as they give presentations to agricultural groups/trade associations. Priority areas for compliance assistance activities include FIFRA section 6(a)(2) requirements, i.e., unreasonable adverse effects reporting, and low income communities as part of the urban initiative. In addition, regions should review compliance data to identify compliance assistance needs and provide input to the Center and the Agriculture Branch in OC. Regions are also encouraged to provide the Center with outreach materials that they/their states develop. Another area for compliance assistance relates to citizen complaints and ensuring that use cases involving allegations of significant harm are tracked under FIFRA section 27 and are responded to adequately.

### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

### **Compliance Monitoring**

To maintain an effective compliance monitoring program, regions must allocate limited resources as effectively as possible, and trade-offs will have to be made. However, to the maximum extent possible, regions should target and conduct inspections and investigations to support pesticide initiatives, such as unregistered sources and e-commerce.

Inspections are expected to be completed for every FIFRA core program area. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements. Regions are expected to track and prioritize tips/complaints, and follow-up, as needed. "Follow-up" means that the region needs to evaluate the tip/complaint to determine the appropriate next step, and either: 1) refer the tip/complaint to a state as appropriate and track it through resolution consistent with national guidance; or 2) obtain additional information through Federal investigation/show cause letter if necessary and issue appropriate Federal action as appropriate. Regions are also expected to follow-up on all referrals received from Headquarters and states.

### **Performance Expectations**

For FIFRA, the primary focus is on providing assistance/training/oversight to states/tribes carrying out FIFRA related enforcement under cooperative enforcement agreements. This includes issuing credentials as appropriate and providing training and grant oversight. Regions should refer to the Federal facilities section of this attachment (Section 9) for guidance on including Federal facilities in core program activities where applicable. EPA is responsible for enforcing data quality requirements (GLPs), section 7 establishment registration and the submission of production data, import and export requirements, and the reporting of unreasonable adverse effects under section 6(a)(2) of FIFRA. States conduct product compliance inspections and may take the enforcement action or in some cases, refer the case to EPA. Regarding enforcement of pesticide use provisions, the statute gives primary use enforcement responsibility to the states. EPA has a state oversight and training role, as well as a compliance assistance role. A use initiative will be planned and implemented in this MOA cycle by Headquarters, regions, and state partners.

In FY 2000 and 2001, regions participated in a WPS labeling initiative, which helped to provide a baseline of label compliance, and to improve compliance monitoring communication and cooperation among Headquarters, regions, and state partners. Regions are expected to use the knowledge and experience gained from this initiative to encourage state lead agencies to continue routine surveillance of pesticide labeling at pesticide producing establishments, dealer and distributor locations. Regions and states should focus on implementing WPS use enforcement, and working with Headquarters to reduce any impediments to this program.

### **Enforcement Actions**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

### **Program Leadership and Evaluation**

Headquarters has general expectations with regard to data entry, use of press releases, and assessment of state performance under enforcement cooperative agreements.

**Data Entry:** It is critical that the regions enter all Federal and state data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the National Compliance Data Base (NCDB). In addition, regions should refer to the Data Quality section of the Introduction to Core Program (p. 5) for general information on these activities.

**Press Releases:** The regions should use press releases for regional activities which are not part of national initiatives, as appropriate, in order to promote further compliance.

**State Cooperative Agreements:** OECA will provide a draft pesticides state enforcement cooperative agreement guidance for review and comment separately from the MOA guidance. This cooperative agreement guidance, once finalized, should be followed by the EPA Regional offices when negotiating enforcement cooperative agreement commitments. For purposes of the MOA discussions, OECA is looking for each Region's projections on the number of FIFRA inspections which they will be using as the basis for negotiations with each of their state enforcement grantees.

## **5. TSCA/EPCRA PROGRAMS**

The program focus for FY 2002/2003 is to ensure that the regulated community provides accurate information about toxic chemicals and their associated risks to the EPA, to the public, and to other Federal, state, and local entities. EPCRA includes two distinct programs, 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 and local entities, and the community 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. The public's right-to-know is also encompassed in the TSCA regulatory programs for asbestos, PCBs, and lead-based paint, as well as Core TSCA (sections 4, 5, 8, 12 and 13).

### **Compliance Assistance**

All regions need to maintain expertise in the EPCRA and TSCA program areas in order to respond to regulated entities and the public. Compliance assistance should be a focus in follow-up to the issuance of new or amended regulations, and will also be incorporated into national sector, or other compliance and enforcement initiatives as appropriate. In FY 2002, new regulations which will require focused compliance assistance include the TSCA 403 rule, the asbestos Worker Protection Rule, and new reporters for EPCRA 313.

Initiatives are collaboratively developed by Headquarters, the regions, and the appropriate program office. Examples of recent compliance assistance initiatives include the National Nitrate Initiative, the Chemical Industry Sector Strategy's EPCRA project, EPCRA 313 reporting guidance for specific industry sectors (food processing, rubber and plastics, and the semiconductor industries), and internet access to comparative TRI data from facilities in five sectors via the Sector Facility Indexing Project (SFIP). Past initiatives which focused on a particular sector resulted in increased compliance rates, and in FY 2002/2003 the regions and program offices will be involved in identifying potential industries or sectors to focus Agency resources. The strategies for previous initiatives included a focused compliance assistance period with a recommended time frame for targeted assistance to ensure that the regulated community has the information which they need to comply.

For the chemical industry, the regions should promote and utilize, where appropriate, ChemAlliance, the compliance assistance center for the chemical industry. ChemAlliance can be used by regions and states as a tool to provide multi-media compliance assistance, including information related to TSCA, EPCRA and CERCLA 103. Appropriate Regionally-developed compliance assistance materials can also be made available through ChemAlliance.

Compliance assistance goals for the EPCRA 313 enforcement program are revised for FY 2002/2003. Regions should communicate with 20% of the known EPCRA Section 313 regulated universe within their region each year. This can be accomplished by telephone calls or by workshops/seminars. This will move toward the goal that every 5 years, the entire known regulated

universe has had EPA-provided compliance information. Telephone calls may be initiated by a regulated entity or the region. The region should provide compliance information such as the basic requirement of EPCRA and the criteria that triggers it, the telephone number for the EPCRA Hotline, and the internet address for the TRI Program web page. For region-initiated calls, outreach and compliance assistance should be targeted at facilities with known or suspected problems. To track our compliance assistance efforts, regions should maintain a record of each call, recording information such as: date of the call, the name of the regulated entity, and the nature of the information exchanged. Patterns noted from this screening information also help the region identify types of facilities to investigate or inspect. Regions should maintain records of the names and numbers of regulated facilities that attend regional workshops/seminars. OECA believes that such efforts are important in order to quantify the Agency's efforts to communicate fundamental EPCRA Section 313 information to the regulated universe.

### **Compliance Incentives**

Regions will work with OECA to identify candidate industries or sectors for compliance incentive programs in order to focus our efforts to promote compliance. OECA will use national meetings and conference calls as the means for selecting industries and/or sectors for Federal compliance incentive programs. In FY 2002/2003 Federal compliance incentive initiatives may be developed to focus efforts for EPCRA 304/CERCLA 103, EPCRA 311/312, and EPCRA 313. The compliance audit initiative started in FY 2001 for the lead-based paint program will continue in FY 2002. As part of the Agency's PBT program, TPED will continue to work with Regions to further decommission PCB-laden equipment. The Core TSCA Center, working with Regions 2 and 5, and any other interested regions, will develop a compliance audit program in FY 2002, and will focus efforts to negotiate corporate compliance audit agreements. Federal compliance incentives programs started in FY 2001 will be evaluated and may be refined in FY 2002/2003, as appropriate. Regions are encouraged to work with OECA when developing their own compliance incentive programs based on regional needs and priorities.

Except for the minimally-invested Core TSCA regions, 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 should be forwarded to TPED for appropriate action.

### **Compliance Monitoring**

To maintain an effective compliance monitoring program, regions must allocate limited resources as effectively as possible. 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. The Sector Facility Indexing Project (SFIP) is a regional data analysis and targeting tool. The information in SFIP could be used to analyze the relative quantities of data in the system and identify the better facilities.

**EPCRA/CERCLA 103 and EPCRA 304, 311 and 312**

Regions should target and conduct inspections and investigations on the following areas:

- EPCRA 313 - data quality, non-reporters, and new reporters for Pb and PBT Rules;
- EPCRA 311/312 - late reporters, non-reporters; and
- EPCRA 304/CERCLA 103 - late reporters, non-reporters - identifying Federally-permitted release violations as part of multi-media cases, particularly in conjunction with Clean Air Act violations.

In the EPCRA 313 program, regions are expected to conduct at least 10 on-site Data Quality inspections each fiscal year as part of their overall inspection commitment. In a FY 2002/2003 pilot project, regions may also include “desktop inspections” in lieu of a portion of their traditional EPCRA 313 on-site inspections. Desktop inspections are the functional equivalent of on-site inspections and include the initial targeting and screening activities associated with on-site inspections, but allow regions to obtain information directly from a facility or database and issue an enforcement response (where appropriate) without conducting an actual on-site inspection. The data obtained in a desktop inspection is evaluated for determination of a violation(s), and where a violation(s) may exist, the region will follow-up with the appropriate enforcement response. This activity will save the regions time and travel resources. Because both traditional on-site inspections and desktop inspections can produce similar results, regions wishing to participate in the desktop inspection pilot project may, after negotiation with OECA, adjust their total number of inspection commitments to be offset by a specified number of desktop inspections. Regions combining inspections and desktop inspections should target 2 percent of the regulated universe in their region each fiscal year. The regions participating in the pilot project should manually track the number of EPCRA desktop inspections conducted.

**TSCA**

Regions should target and conduct inspections and investigations (including show cause letters or subpoenas where appropriate) focused in the following areas:

- lead-based paint: Lead Disclosure Rule (Section 1018), and TSCA Sections 402/403/406;
- asbestos: AHERA and asbestos MAP;
- PCBs: in conjunction with PBT efforts; and
- Core TSCA - in conjunction with the Core TSCA Center.

Regions should use screening and targeting tools to identify inspection targets based on national and Regional priorities. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements. With the exception of minimally invested Core TSCA regions, regions are expected to track and prioritize tips/complaints, and follow-up, as needed. Regions are also expected to follow-up on all referrals received from Headquarters and states. “Follow-up” includes evaluating the tip/complaint to determine the appropriate next step, and either: 1) refer the



tip/complaint to a state as appropriate and track it through resolution consistent with national guidance; or 2) obtain additional information through Federal investigation/show cause letter/subpoena if necessary and issue appropriate Federal action as appropriate. Under Core TSCA, minimally-invested regions are to refer tips and complaints to the Core TSCA Center for follow-up. Those regions who chose to maintain a minimal presence in this program are expected to respond to questions from the regulated community, to conduct limited inspections as resources allow, and to work with Customs 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 Center will assist in targeting inspections, but the region is expected to provide legal and technical enforcement case support.

In the TSCA lead-based paint program, several new or relatively new rules merit increased attention and an increased number of inspections. 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 the Section 406 Renovator and Remodeler Rule, in those states without authorized programs. Each tip/complaint should be reviewed carefully to determine if follow up is necessary. In most instances, letters should be sent to potential violators identified in a tip or complaint as follow-up. After screening the response, in appropriate circumstances regions should conduct an on-site investigation. In those states without authorized 402 programs, regions should conduct 402 inspections of training providers and inspect work sites; this activity should be briefly described in the MOA submission as rationale for any trade-offs with Disclosure Rule or Section 406 inspection commitments.

Regions will be responsible for a prorated share of EPA's biannual commitment to conduct 9,000 lease reviews using extramural funds received in FY 2001. To support these efforts, on April 25, 2001 a joint memorandum from the Compliance Assistance and Sector Programs Division (CASPD) and the Toxics and Pesticides Enforcement Division (TPED) to the Regional Enforcement Division Directors outlined the distribution of \$1.23 million dollars in extramural funding to enable the regions to hire Senior Environmental Employment (SEE) Program inspectors to conduct the 9000 lease agreements under the Real Estate Disclosure Rule ("1018 Rule"). On May 1, 2001, that money was reprogrammed to the regions and was available to begin the hiring process. We anticipate that 4.5 lease reviews will equate to one inspection. Therefore, we have targeted a goal of 2000 inspections to be conducted in FY 2002. The regional inspection break out will be forwarded to the regions in June 2001.

In the TSCA asbestos program, inspection resources should be targeted at school districts with known AHERA compliance problems and at charter schools in states where EPA is the lead for inspections and enforcement. In non-waiver states, regions will follow-up on violations referred by states, and develop appropriate enforcement responses. Tips and complaints should be followed-up on as appropriate.

Since the inception of the TSCA PCB program some 25 years ago, much progress has been made in reducing the risks of PCBs to the public's health and to the environment. Through EPA's regulatory and enforcement efforts, PCB equipment has been retired and replaced with non-PCB

equipment, and much PCB waste has been properly destroyed or disposed. Still, there are over 20,000 PCB transformers that were registered by 2,500 companies with the Agency as of December 1999, that are still in use. Additionally, there are approximately 50 commercially permitted PCB disposal facilities, and 90 PCB commercial storers who continue to handle high volumes/concentrations of PCBs. In FY 2002/2003, 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. 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). Recently, some regions have reduced their inspections to following-up on tips and complaints, and have not visited commercial storers and disposers for some time. Over the next two-year period, regions should inspect each commercial storer and disposer in their region at least once so that a baseline of enforcement activity at these sites can be established. (The region should include those facilities that have filed TSCA PCB Commercial Permit Applications that are still pending with OPPTS as part of the universe.) In summary, regions are expected to maintain baseline inspection/enforcement efforts with biennial inspections of commercial storers and disposers, and to target inspections of high

concentration PCB users and non-reporters of PCB transformers. Tips and complaints should be followed-up as appropriate.

### **Performance Expectations**

In FY 2001, some responsibilities for the Core TSCA program were transferred from some of the Regions to the Core TSCA Center in Denver, Colorado, which is managed by the Toxics and Pesticides Enforcement Division (TPED). The Center is now responsible for targeting, implementing national compliance assistance and compliance audit programs, negotiating corporate compliance audit agreements, conducting enforcement investigations of corporate-wide misconduct, and assuring continuity of compliance monitoring and enforcement from year-to-year. Regions 2 and 5 are to continue, as in the past, their field investigations and enforcement program.

### **Enforcement Actions**

Regions, other than those who are minimally invested in Core TSCA, are expected to respond to violations in a timely manner, and in accordance with national policy as contained in the individual program enforcement response policies. For Core TSCA, minimally-invested regions will refer all self-disclosures and other violations to TPED for evaluation and appropriate action.

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 MOA 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 industries or sectors for enforcement case initiatives. OECA will use national meetings and conference calls as the means for selecting industries and/or sectors

for Federal enforcement initiatives.

### **Program Leadership and Evaluation**

Headquarters has general expectations with regard to data entry, use of press releases, and assessment of state performance under enforcement cooperative agreements:

**Data Entry:** 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). It is important for timely data entry to occur for purposes of national analysis and publication of data as appropriate. OECA will track data entry and will discuss any data issues with regional management. Regions should also enter data for EPCRA 301-312 into the National Enforcement Compliance Tracking and Reporting System (NECTAR) database. "Desktop inspections" for EPCRA and AHERA must be manually tracked and reported to Headquarters.

**Press Releases:** Regions should use press releases for regional activities which are not part of national initiatives, as appropriate, in order to promote further compliance.

**State Cooperative Agreements:** For purposes of the MOA discussions, OECA is looking for each Region's projections on the number of asbestos, lead 402, and PCB inspections which they will be using as the basis for negotiations with each of their state enforcement grantees. Regions should also refer to the EPA-State Relations section of the Introduction to Core Program (p. 5) for further information regarding these activities.

## **6. AIR PROGRAM**

The Clean Air Act (CAA) core program covers activities relating to Section 110 (SIPs/FIPs/TIPs), Acid Rain, Title V Operating Permits, Stratospheric Ozone Protection, NSPS, NESHAP/MACT and PSD/NSR requirements. Regions should refer to the Office of Air and Radiation's FY 2002/2003 Implementation Plan for additional guidance relating to air compliance programs. Regions should refer to the Introduction to Core Program for general information on shared core program elements. Regions should also refer to the Federal facilities section of this attachment (Section 9) for guidance on including Federal facilities in core program activities where applicable.

### **Compliance Assistance**

Regions should refer to the Compliance Assistance section of the Introduction to Core Program (p. 3) for general information regarding these activities.

### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

### **Compliance Monitoring**

States, local, and tribal agencies will have primary responsibility for the delegated or authorized programs and EPA will take the lead on the non-delegated programs (e.g. asbestos and radionuclide NESHAPs, CFCs, certain NSPS and MACT), and for compliance evaluations on tribal lands. The emphasis for FY 2002/2003 is evaluating compliance through implementation of the revised Compliance Monitoring Strategy (CMS). Guidance on conducting compliance evaluations will be provided in the revised CMS, which will include review of all required reports, Title V self-certifications and supporting documentation, facility records, visible emission observations, and source tests. The revised CMS was published in April, 2001. In addition to CMS implementation, there is continued emphasis on investigations, and an increased emphasis on implementation of the air toxics (MACT) program.

- Implementation of the Compliance Monitoring Strategy

Compliance evaluations of Title V major sources and synthetic minor sources that emit or have the potential to emit emissions at or above 80 percent of the Title V major source threshold should be conducted in each region in accordance with the revised Compliance Monitoring Strategy (CMS). The revised CMS provides a mechanism for recognizing and utilizing the wide range of tools available for evaluating and determining compliance. Increased emphasis should be placed on: providing training and implementation support for state, local, and tribal agencies; identifying the universe of sources subject to the CMS policy; ensuring that CMS plans are developed and negotiated; maintaining records of regional, state, local, and tribal compliance monitoring activities; and entering facility-specific compliance data in the national air data base (AIRS/AFS).

Consistent with the revised CMS policy, where source tests are conducted, state, local and tribal agencies should report these activities and the results in the national air data base (AIRS/AFS). Regions should ensure that states enter the appropriate test result information into the national air data base.

Regions should review one Title V certification for each source over the two-year MOA planning cycle. Regions should give special scrutiny to Title V permits from sources that report full compliance, especially in the source categories targeted as priorities by OECA. Regions should review and comment to the permitting authority on the compliance and enforcement components of at least 5% of the initial Title V permit applications they receive each year. Regions should also compare the information in the compliance certifications to the compliance status reported for sources in AFS to ensure their consistency.

Regions and state, local, or tribal agencies should continue to report into RECAP. In the MOA Clean Air Act investigation and inspection commitments chart, regions should give an estimate

of the total number of state and Federal NSR or PSD investigations, number of other investigations, and provide estimates for subsets of this total that includes full compliance evaluations.

- Investigations

Regions in cooperation with participating state, local, or tribal agencies should initiate or continue conducting an average of 1 in-depth investigations per state, per year (for further information refer to the PSD/NSR priority of the MOA Guidance). Such investigations should include compliance evaluations, performance tests, and detailed document/data reviews as appropriate. Regions should estimate the number and type of CAA investigations expected in the MOA chart for CAA enforcement and compliance activities. For each investigation cited in the chart, Regions should document the types of violations sought.

- MACT Implementation

Regions should place more emphasis on implementation of the core air toxics (MACT) program, focusing on those standards that are of particular importance in their Region. Regions should develop and implement the air toxics program with state and local agencies through conducting compliance evaluations, using compliance assistance tools, assuring proper delegation of the MACT program, issuing applicability determinations, reviewing permits, and inputting data into AIRS/AFS and MACTrax.

### **Enforcement Actions**

Headquarters expects that Federal enforcement will be considered where states 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, particularly 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 T&A Enforcement Response to HPVs” during FY 2002/2003, Regions should strictly adhere to the requirements of the Policy.
  - ▶ Regions should ensure appropriate enforcement actions are taken for violations reported on annual compliance certifications.
  - ▶ Regions should ensure appropriate enforcement actions are taken for synthetic minor violations.
- For older cases, regions should ensure that 33 percent of all High Priority Violators, and all that are 3 years old or older, are addressed each year.
- Regions should evaluate and bring to closure 100% of any self-disclosures received by a region, consistent with national policy.
- Regions should reduce their Federal case backlog as described in the Cross-Program Core

Activities section of the Introduction to Core Program (p. 1).

- Regions should aggressively exercise EPA's 1997 clarified penalty authority against Federal agencies for Clean Air Act violations in appropriate circumstances.

### **Program Leadership and Evaluation**

As part of the core, regions will participate in reviews of SIPs/FIPs/TIPs, regulations, policies, guidance, delegations, etc. For CAA purposes, Headquarters has the general expectations with regard to data entry and assessment of state performance, outlined below.

Regions should ensure that all necessary information such as the following be entered into the AFS data system to provide accurate and timely information:

- compliance evaluation dates and compliance status after evaluation, including date of violation, if appropriate;
- Title V compliance certification review and appropriate results code;
- stack tests dates and appropriate results code;
- enforcement actions (NOVs, orders, civil actions, criminal actions, etc) and date of action;
- number of settlements and date settlement entered, including penalties accounting for economic benefit.

Please refer to the Compliance Monitoring Strategy and the Minimum Data Requirements (MDRs) ([www.epa.gov/ttn/airs/afs/memos/mdr.html](http://www.epa.gov/ttn/airs/afs/memos/mdr.html)) for more detailed guidance on reporting compliance information.

Timely and accurate enforcement data entry is extremely important for purposes of national analysis and publication of data, as appropriate. Accordingly, regions should include adequate data entry as a requirement for a portion of each state, local or tribal agency's Section 105 grant. Headquarters will be tracking data entry and discussing it with regional management.

State, local or tribal performance assessment: Negotiation and development of an agreed upon work plan with state, local, or tribal agencies on enforcement activities, and assessment of their performance, is critical if resources are to be used as effectively as possible. Regions should assess the adequacy of state, local, and tribal agency enforcement programs, particularly with respect to appropriate penalties for High Priority Violators and identification of High Priority Violators, including quarterly/annual reviews, file audits, oversight inspections, etc. Regions will be negotiating Performance Partnership Agreements (PPAs), compliance assurance agreements, SEAs or state/local/tribal grant work plans, which will ensure adequate state, local, and tribal enforcement in all delegated areas, and include Federal roles and responsibilities. These negotiations should be consistent with the principles identified in the discussion of joint planning and priority setting and work sharing identified in the Cross-Program Activities Core and EPA-State Relations sections of the Introduction to Core Program (p. 1-5). Accordingly, regions should include adequate data entry as a requirement for a portion of each state, local, or tribal agency's Section 105 grant, as appropriate

(e.g. synthetic minor sources).

## **7. RCRA HAZARDOUS WASTE PROGRAM**

EPA is committed to ensuring that hazardous wastes are managed in manners that are 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. For example, in the FY 2002/2003 MOA RCRA national priority, permit evaders, include illegal (e.g., dilution) hazardous waste treatment practices, and wastes that are no longer exempt under the Bevill amendment. Additionally, this focus will include companies that have sought to include themselves within the ambit of various exceptions or exemptions to the RCRA Subtitle C system but have failed to meet the terms of those exceptions or exemptions.

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 9) for guidance on including Federal facilities in core program activities where applicable.

### **Compliance Assistance**

Compliance assistance activities should focus on newly regulated handlers, handlers subject to new regulations, small businesses in the priority industrial sectors and other small businesses with compliance problems. Regions should enter their compliance assistance activities in RCATS; however, if the region conducts on-site compliance assistance they can instead record them in RCRAINFO. States are not able at this time to enter their compliance assistance into RCATS so they should continue to use RCRAINFO. Headquarters will generate RCRA compliance assistance numbers for Federal activities out of both RCATS and RCRAINFO.

### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

### **Compliance Monitoring**

The RCRA core program includes the compliance monitoring activities set forth in Tables I and II (pages 29 and 30). Both state and Federal compliance monitoring activities may be required in implementing the activities in Table I (e.g., maintaining the annual level of generator inspections). To facilitate accomplishment of Agency FY 2002/2003 priority activities, achievement of the level playing field principle and oversight of state compliance assurance and monitoring activities, Regions should maintain a Federal presence in the core program, conducting the compliance monitoring activities set forth in Table II.

The regions (in consultation with OECA) may conduct fewer or additional compliance monitoring activities if it is determined that such a deviation is warranted (based on the criteria listed below).

Table I - Combined State and Federal Core Activities

Statutory mandated inspections	Inspect ANNUALLY: - Federal facilities under SWDA §3007(c), and as amended by the FFCA - State and local facilities identified under SWDA § 3007(d) Inspect ONCE EVERY TWO YEARS: - Treatment, storage and disposal facilities under SWDA §3007(e) Inspect ONCE EVERY THREE YEARS <sup>1</sup> : - Land disposal facilities under SWDA §3007(e)
Generators (LQGs)	Inspect annually 20% of the large quantity generator universe <sup>2</sup>
Generators (SQGs)	Inspect annually <u>(*)</u> % of the small quantity generator universe <sup>3</sup>

1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility’s ground water monitoring system is adequately designed and installed, an 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.

2 States with a relatively small universe should generally inspect a higher percentage of its universe.

3(\*) States and regions should determine the appropriate levels.

**Note:** Regions should include RCRA Section 6002 inspections in conjunction with inspections of Federal facilities in accordance with E.O. 13101 and FFEO guidance (e.g. as resources allow). Results should be reported to FFEO.



Table II - Federal Core Activities

<p>Facilities/Units that are not Part of an Authorized State Program</p>	<p>Inspect ANNUALLY:</p> <ul style="list-style-type: none"> <li>- Federal facilities under SWDA §3007(c), and as incorporated by the FFCA</li> <li>- State and local facilities identified under SWDA § 3007(d)</li> </ul> <p>Inspect ONCE EVERY TWO YEARS:</p> <ul style="list-style-type: none"> <li>- Treatment, storage and disposal facilities under SWDA §3007(e)</li> </ul> <p>Inspect ONCE EVERY THREE YEARS<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>- Land disposal facilities under SWDA §3007(e)</li> </ul> <p>(At the region’s discretion, the region may enter into an agreement with an unauthorized state under which the state would do some of these inspections under their state law)</p>
<p>Generator</p>	<p>Annually inspect at least 6 generators per state. (The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues, entities with violations in more than one state, transboundary issues, particularly recalcitrant violators; etc.)</p>
<p>Treatment, Storage, Disposal Facilities that are part of an Authorized State Program</p>	<p>Annually inspect at least 2 TSDFs per state. (The regions are encouraged to perform these inspections: in community-based areas, priority sectors, and/or in support of EPA National initiatives; to support state referrals; to address illegal recycling and Bevill issues, entities with violations in more than one state, transboundary issues, particularly recalcitrant violators; etc.)</p>
<p>Other Facilities</p>	<p>Inspections supporting citizen complaint or criminal investigations; off-site policy-related inspections; corrective action inspections, oversight inspections, non-notifier-related inspections, etc.</p>

1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility’s ground water monitoring system is adequately designed and installed, an 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 system; and actual or suspected changes in local ground water regimes.

### Performance Expectations

The states and EPA regions should work together to determine the appropriate mix of Federal and state compliance monitoring activities to meet core program activities. In making its determinations, each Region should examine the compliance status within its geographic purview. In consultation with states, affected Indian tribes, and OECA, the following criteria should be used (as appropriate) to determine the appropriate field presence and create a credible deterrence:

- “feedback” received from external and internal stakeholders (e.g., environmental justice entities, Inspector General findings, citizens and community groups) regarding the quality of Federal and state enforcement programs;
- use (and frequency) of appropriate sanctions ( e.g., administrative orders) to create a deterrence;
- the level of compliance monitoring activities needed to create a credible deterrent;
- abilities of state and EPA enforcement programs to identify violations and violators of concern and take timely and appropriate responses to noncompliance in accordance with criteria set forth in the March 1996 RCRA Enforcement Response Policy (and subsequent revisions);
- trends in compliance shown by performance measures, performance indicators, and other indicators (e.g., SNC rates, rates of compliance) relative to national and Regional levels;
- the degree to which a given enforcement program utilizes multi-media and other (e.g., integrated) strategies in determining priorities and implementing its compliance assurance and enforcement activities;
- “feedback” from joint or “side-by-side” (Federal and state) compliance monitoring activities;
- state environmental program reviews/audit findings and conclusions (including appropriate “self-evaluations”);
- current regional compliance assurance and enforcement commitments reflected in state-EPA work share agreements;
- EPA activities in fulfillment of National EPA priorities; and
- other criteria (e.g., state priorities relative to EPA priorities).

### Enforcement Actions

In addition to the general core program activities listed earlier, the RCRA enforcement core program consists of complying with the 1996 RCRA Enforcement Response Policy (and subsequent revisions). This includes: 1) appropriately classifying all facilities meeting the definition of a significant non-complier; 2) taking timely and appropriate enforcement actions; and 3) entering all appropriate data into the national database in a timely and appropriate manner.

Regions should take appropriate Federal enforcement actions in situations where Federal involvement is necessary (e.g., to address public health and environmental concerns; to maintain a level playing field; to achieve National priorities; and to address environmental justice and citizen concerns). Federal enforcement could be particularly helpful in bringing complex matters to a successful and environmentally beneficial resolution (e.g., illegal recycling operations; Bevill waste-related issues; entities with violations in more than one state; trans-boundary issues; and particularly

recalcitrant violators) or is essential to ensure fair and equal environmental protection mandated by law.

Finally, we expect that the regions will invest compliance monitoring resources to support efforts to develop enforcement actions against significant non-compliers with violations in more than one state.

### **Program Leadership and Evaluation**

Data Entry: The following RCRAInfo data elements are essential with respect to measuring the RCRA program performance and must be entered into RCRAInfo in a timely manner by Federal and state enforcement personnel to accurately reflect program activities:

- 1) Evaluation data elements
- 2) Violation data elements
- 3) Enforcement elements

Note: Regions are reminded of the importance of entering and/or updating SNC determinations. Additionally regions should verify (for accuracy) facility SIC, process, legal status, and operating status codes.

State Oversight: Regions are expected to ensure that quality RCRA enforcement and compliance programs are maintained through traditional state oversight activities, work share agreements with states, and independent EPA compliance assurance and enforcement activities. In addition, Regions should refer to the EPA-State Relations section of the Introduction to Core Program (p. 5) for general information regarding these activities.

### **RCRA Underground Storage Tank Program**

EPA considers implementation of the UST 1998 requirements for upgrading, replacing, or closing old tanks an important activity for protecting human health and the environment. Beginning December 23, 1998, all substandard USTs should have been upgraded (by adding spill, overfill, and corrosion protection) replaced or properly closed (either temporarily or permanently). As of December 22, 1999, all UST systems that were in temporary closure should be either permanently closed, upgraded, or replaced. Regions should also maintain an enforcement presence concerning leak detection and financial assurance violations. USTs that do not meet these requirements are in violation of Federal and state laws.

### **Compliance Assistance**

States and EPA have done extensive outreach to UST owners and operators over the past 10

years. Additional investments in outreach and assistance should be strategically focused (e.g., small businesses with compliance problems).

### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

### **Compliance Monitoring**

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 Federal facilities; 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; and facilities that are endangering sensitive ecosystems or sources of drinking water by failing to upgrade, replace or close USTs<sup>1</sup>.

### **Performance Expectations**

Regions should provide the number of UST facilities inspected (by the region, per state) and the number of UST facilities inspected by the Region in Indian Country. Also, provide the numbers of the following: field citations issued, field citations settled, administrative complaints/orders issued, administrative complaints/orders settled, and self disclosures received.

### **Enforcement Actions**

Regions should take prompt and effective action on UST violations discovered, particularly those that present an imminent and substantial threat to health and the environment. Generally, administrative, or judicial complaints or orders should be issued.

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<sup>1</sup> Some State-EPA cooperative endeavors may include other UST entities (e.g., owners and operators of individual UST facilities).

## **8. FEDERAL ACTIVITIES PROGRAM**

The Federal activities core program for FY 2002/2003 is built around the following major areas:

### **NEPA**

- Fulfill Agency obligations under Section 309 of the Clean Air Act, the National Environmental Policy Act, and related laws, directives and Executive Orders (all Regions).

### **International**

- Assist in meeting the multimedia objectives for enforcement and compliance cooperation listed in the U.S./Mexico Border XXI plan (Regions VI and IX).
- Assist in efforts to improve colonias environmental conditions (Region VI).
- Assist in enforcement and compliance cooperative efforts with Mexico and Canada relating to transboundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., PCBs, mercury), and other regulated substances (Border Regions).
- Work with representatives of other countries, through established international agreements, to ensure compliance with domestic laws and international agreements (all Regions).

### **Ensure Federal Actions are Consistent with Goals**

NEPA / CAA §309 Review: Regional commitments to carry out EPA's responsibilities to review and comment on major actions taken by other Federal agencies and by EPA to ensure that adverse effects are identified and are either eliminated or mitigated.

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

### **Performance Expectations**

Regions should review all major proposed Federal actions subject to NEPA and achieve successful mitigation for at least 70% of the adverse environmental impacts resulting from those actions.

Regions should prepare environmental reviews (EISs or EAs) for EPA-issued 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; EPA laboratories and facilities; and Clean Water Act wastewater treatment plant grants.

Regions should prepare environmental reviews (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 (BEIF) for the US/Mexico Border Environment Cooperation Commission projects; and reviews conducted under the "voluntary NEPA policy."

### **Enforcement and Compliance with Other Countries**

International Programs: The majority of requested commitments fall to Regions VI and IX for U.S. Mexico border work in connection with the La Paz Agreement and NAFTA-related work. Regions VI and IX will continue the implementation of U.S.-Mexico work plans for enforcement and compliance cooperation in the border region; work with the U.S. Customs Service to improve performance of joint responsibilities along the border; review the compliance status of U.S. receiving facilities and track the flow of hazardous waste. Headquarters will process notifications for import and export of hazardous waste to ensure compliance with domestic regulations and international agreements; and track the flow of hazardous waste both in and out of the United States.

## **9. FEDERAL FACILITIES PROGRAM**

In order to complete the core program requirements for the Federal facilities enforcement and compliance program, Regional staff including Federal Facility Program Managers, media program and Regional Counsel staff, where appropriate, are expected to undertake the following activities:

### **Compliance Assistance**

- continue to provide compliance assistance activities at Federal facilities including civilian Federal facilities;
- continue to provide compliance assistance efforts at all Federal agencies through meetings, conferences, publications, and training;
- continue to aggressively advocate and actively promote environmental management reviews for Federal facilities and conduct at least three EMRs per fiscal year (assuming three facilities agree to EMRs conducted and that travel and contract funds, if necessary, are available). Note: EPA is obligated to provide EMRs to Federal facilities under EO 13148; and
- assist Federal facilities and agencies in fulfilling the requirements of EO 13148, Greening the Government Through Leadership in Environmental Management, particularly requirements relating to environmental management systems (EMSs) and to toxic chemical use and release reductions.

### **Compliance Incentives**

- work with their Federal facilities to promote OECA's compliance incentive policies (e.g. audit policy) 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, disclosures submitted under the OECA audit policy; and
- actively support Project XL, Performance Track and other reinvention initiatives with Federal agencies.

### **Compliance Monitoring**

- have a process for identifying, targeting, and inspecting Federal facilities, and responding to any violations discovered at these Federal facilities;
- continue to conduct at least two multimedia inspections each fiscal year. A multimedia inspection consists of (1) a CAA, CWA, or RCRA inspection plus at least one additional media inspection at the same facility; or (2) some combination of two or more CAA, CWA or RCRA inspections at the same facility;
- increase single and multimedia inspections at Federal facilities in those areas where EPA has new or clarified enforcement authorities against Federal facilities (e.g., SDWA, CAA, UST and TSCA Title IV);
- continue to aggressively seek reimbursement for costs of annual RCRA inspections at Federal facility treatment, storage and disposal facilities;
- include RCRA 6002 inspections in all EPA RCRA inspections of Federal facilities in accordance with FFEO guidance and report results of RCRA 6002 inspections to FFEO;
- conduct EPCRA inspections at Federal facilities to determine compliance with EPCRA sections 301 through 313, per the mandate of E.O. 13148;
- conduct annual inspections (or arrange with delegated states to conduct annual inspections) of all Federal facility treatment, storage, or disposal facilities in accordance with RCRA 3007(c); and
- continue to include Federal facilities as part of strategies to address media-specific MOA priorities, including significant Federal facilities located in place-based priority areas or within other significant sectors.

### **Enforcement Actions**

- continue to lead and support enforcement negotiations, litigation and oversight at Federal facilities;
- utilize as appropriate, any new or clarified penalty authorities (e.g., CAA, SDWA and any other new authorities) and encourage referrals of cases from states that do not have full enforcement authority (e.g., CAA and UST); and
- encourage the use of SEPs as part of the settlement in cases.

### **Integrated Compliance and Enforcement Strategies**

- implement strategies integrating compliance incentives, compliance assistance, compliance monitoring and/or enforcement activities to increase compliance at Federal facilities.

### **Program Leadership and Evaluation**



- continue to utilize and efficiently manage and track regional Federal facility resources, particularly FTE usage and extramural funding provided by FFEO;
- continue to utilize EPA data systems and work to resolve any errors in data;
- continue to assist FFEO in resolving discrepancies in agency-wide environmental compliance status reports issued to agencies by FFEO;
- continue to provide RECAP information to the Office of Compliance in OECA;
- continue to input all Federal facilities compliance assistance activities into RCATS;
- encourage the use of OTIS and SFIP websites by other Federal Agencies; and
- encourage regional participation in monthly conference calls, bi-annual national meetings and other national events in order to promote Regional participation in Federal facility issues.

Regions are also strongly encouraged to use and provide environmental compliance status reports to Federal agencies.

## **10. MULTIMEDIA PROGRAM**

The multimedia enforcement programs in existence at Headquarters and within each region 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 reinvention and underlie much of the Agency's enforcement reorganization. Moving multimedia enforcement to the core program recognizes the experience gained, successes generated and resources already committed to implement this program.

### **Compliance Assistance**

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, rather than compliance assistance. However, the results of a multimedia analysis of specific facilities or entire companies might prove useful in planning future compliance assistance activities.

### **Compliance Incentives**

Regions should refer to the Cross-Program Core Activities section of the Introduction to Core Program (p. 1) for general information regarding these activities.

### **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 hopes to assist the regions in promoting a process-based approach as well as a more targeted and efficient approach to multimedia inspections in general. This targeted approach includes multimedia inspections that might focus on several media, after a particular facility is assessed under all media prior to an actual inspection. The goal is to achieve the best environmental result while using resources efficiently.

Participation in cases developed under the NESS protocols (see paragraph b under Enforcement Actions) 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 inspection and case development training, projected numbers of multimedia inspections 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.

### **Enforcement Actions**

#### (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) National Enforcement Screening Strategy (NESS)

Each region should support the National Enforcement Screening Strategy (NESS) by participating in the initial facility screening exercise and to an increasing degree as facilities in the national strategy are identified. This includes case research activities, multimedia inspections of NESS facilities, and leading and/or participating in case development and litigation teams, as appropriate. Once the NESS selection process for identifying companies for a national enforcement investigation is completed, the region must determine the level of effort required for its participation.

If the Region does not plan on participating in any aspect of the NESS, it should be reported in the MOA submissions as an exception to the multimedia core program.

### **Program Leadership and Evaluation**

#### **(a) Data Entry/Management**

No new reporting is required. Current multimedia reporting requirements are outlined in RECAP. In addition, the number of multimedia and multi-facility referrals and penalty order complaints must be reported pursuant to the End of Year Enforcement and Compliance Data Reporting Guidance. Regions are reminded that in order to obtain an accurate count for multimedia and multi-facility judicial referrals, complaints and compliance orders, a multimedia-multi-facility case form must be completed. Regions are similarly reminded to notify the Multimedia Enforcement Division at Headquarters of all multimedia referrals.

#### **(b) Regional-State Coordination**

State involvement in national multimedia casework is strongly encouraged. In the case of enforcement actions developed under the National Enforcement Screening Strategy protocols, 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 NESS-coordinated actions. Generally, although there is no oversight of state multimedia program development, per se, the regions may encourage the development of such programs as they see fit, requesting Headquarters assistance and resources as appropriate.

## **11. ENVIRONMENTAL JUSTICE PROGRAM**

EPA is committed to implement Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," by focusing Federal attention on the environmental and human health conditions in these communities. The Office of Environmental Justice has worked with all parts of EPA, through a network of environmental justice coordinators, to integrate environmental justice in all programs, and within OECA to ensure that enforcement and compliance assurance addresses environmental justice concerns and that these activities are coordinated to more effectively address the needs of impacted communities.

### **Compliance Assistance**

When conducting focused compliance assistance activities, the EPA regions and States should ensure that regulated entities within EJ communities, or impacted communities with significant minority and/or low-income populations, are recipients of EPA's compliance assistance materials and services as appropriate. In addition, when producing compliance assistance materials, EPA should make an effort to ensure that they are reproduced in the appropriate multiple languages of the impacted regulated community whenever possible.

## Compliance Monitoring

EPA inspections are subject to the Executive Order 12898 which requires the EPA to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.” Prior to planning and targeting inspections, it may be necessary to consider the following: (1) will the inspection impact enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) has there been any public input regarding the area or facility; (3) is there existing research and data collection related to the health of and environment of minority populations and low-income populations and; (4) have differential patterns of consumption of natural resources among minority populations and low-income populations been identified. When targeting inspections, assess whether inspections are being targeted in a manner that offers equal protection to all populations. Equal protection does not mean equitable distribution of inspections. Rather, inspections should be targeted to diminish any excess risk which may be associated with areas that have a high concentration of industrial activity and/or toxins relative to the resident population.

If an inspection is performed as part of a review for a facility permit or approval, note that the EPA has promulgated an “Interim Guidance For Investigating Title VI Administrative Complaints Challenging Permits.”

The “Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA’s NEPA Compliance Analyses” offers helpful hints on the collection and evaluation of environmental exposure and environmental health data, and may be of assistance in targeting inspections.

## Performance Expectations

To ensure that the goals of environmental justice are accomplished, regional enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement/compliance activities. In particular they should ensure that:

- 1) the public has access to compliance and enforcement documents and data, particularly to high risk communities, through multimedia data integration projects and other studies, analyses and communication/outreach activities;
- 2) EPA’s policies, programs and activities, including public meetings, address minority and low income community issues so that no segment of the population suffers disproportionately from adverse health or environmental effects, and that all people live in clean, healthy and sustainable communities, consistent with Executive Order 12898;
- 3) noncompliance is deterred and environmental and human health improvements are achieved by maintaining a strong, timely and active enforcement presence;
- 4) enforcement actions are directed to maximize compliance and address environmental and human health problems in communities of low income and minority populations;
- 5) when possible, enforcement actions in or near EJ communities require environmental or

human health improvements, such as pollutant reductions and/or physical or management process changes; and

6) when practical, participate in collaborative problem solving with other Federal agencies to address local environmental justice concerns; participate in the environmental justice training collaborative; and continue to participate in the National Environmental Justice Advisory Committee meetings.

### **Enforcement Actions**

If an inspection identifies violations, the EPA Supplemental Environmental Projects Policy contains specific guidance on how environmental justice concerns can be addressed. If a SEP is to replace a fine, the Region should ensure that it is equitable when compared with similar actions in other communities.

### **Program Leadership and Evaluation**

Training: Regional EJ Coordinators can be a valuable source of information to assist in integrating an awareness of environmental justice issues into any Regional enforcement training programs.

## **12. TRIBAL PROGRAM**

EPA has the responsibility to directly implement its programs in Indian country, unless and until tribal governments have received that authority. Given that responsibility, the regions will continue to make sure that all the elements of the core enforcement and compliance assurance program are implemented in Indian country. During FY 2002/2003, the regions should continue to

increase their presence in Indian country, especially in the areas of compliance assistance, and enforcement, where warranted, against Federal, private and tribal facilities.

During FY 2002/2003, OECA will continue to implement its Strategic Plan for Indian Country, which will be finalized during FY 2001 based upon comments received from the Federally recognized tribal governments, state governments, and EPA regions and program offices on the draft strategy. The strategy, which will be issued under separate cover, identifies the activities that OECA and the regional enforcement programs will take to implement the enforcement and compliance assurance program over the next four years in order to protect human health and the environment in Indian country. The strategy will emphasize compliance assistance, compliance incentives, and enforcement to carry out these goals.

Here are the priority activities that individual OECA offices and the regions should be undertaking in FY 2002/2003 to implement the strategy:

### **Assessing Non-Compliance in Indian Country:**

Complete and accurate information about the universe of regulated entities and their compliance status in Indian country is necessary for OECA and the regions to successfully protect the environment and enhance compliance. In FY 2002/2003, the regions should use the data developed through regional inspections and the AIEO baseline assessment survey to help identify and address potential areas of noncompliance.

### **Compliance Assistance**

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 EPA's 1984 Indian Policy, and Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, issued in January 2001, OECA and the regions will utilize compliance assistance as the initial means of resolving non-compliance and maintaining compliance on the part of tribally-owned or managed facilities, although the Agency will take enforcement actions when necessary if compliance assistance fails to correct violations at tribally-owned facilities in a timely fashion. To help implement this approach, during FY 2002/2003, the Regions will work with their tribal governments to assess both short-term and long-term tribal compliance and technical assistance training needs, using the Tribal Environmental Agreements (TEAs) or other process to develop the information.

During FY 2002/2003, OECA's National Enforcement Training Institute (NETI) will continue to provide classroom training and self-instruction training materials available to tribal law enforcement personnel. OECA will also continue work with the regions to address compliance monitoring issues in Indian country related to the potential authorization of tribal inspectors to receive Federal inspector credentials. Authorization of tribal inspectors is a discretionary function of the regions and is possible when an inspector has completed appropriate training designed to ensure Federal inspections are conducted properly under Federal environmental laws and in a manner designed to protect the inspector's health and safety. A guidance document entitled "Authorization Criteria for State and Tribal Inspectors," governing authorization is under final review by OECA.

### **Compliance Monitoring and Enforcement Actions:**

Until tribal governments are delegated the authority to implement enforcement programs, EPA will take enforcement actions in Indian country under its direct implementation authority against Federal facilities, privately-owned and tribally-owned facilities where warranted. In FY 2001, OECA will work with the regions to compile a list of the facilities for which their Federally recognized tribal governments have requested them to take compliance monitoring activities (i.e., inspections, record reviews or enforcement). The regions will continue to inspect these facilities, which may be located on or near Indian country.

### **Program Leadership and Evaluation**

The regions will be asked to manually report on FY 2002/2003 Tribal Performance Measures. Specific reporting requirements will be issued at a later date.

### **13. CRIMINAL ENFORCEMENT, FORENSICS, AND TRAINING CORE PROGRAM**

Criminal enforcement serves the following purposes:

- addresses suspected or known illegal conduct which presents imminent and substantial endangerment to human health and/or the environment;
- prevents future environmental harm from occurring through referrals for court action and deters others from future similar illegal behavior; and
- levels the economic playing field.

#### **Criminal Investigation Division**

In order to achieve these purposes, each Program Office in each region will continue to coordinate and cooperate closely with the Criminal Investigation Division (CID) in 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 order to promote cooperation between each region and CID, the regions will:

- identify leads appropriate for criminal investigations and submit them for the regional screening process;
- assist CID in identifying, targeting and prosecuting persons who provide or maintain false data in areas within EPA's jurisdiction, such as false water monitoring reports, etc;
- provide technical support to CID investigations, providing in-house personnel as witnesses when necessary, and maintain legal and staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crimes;
- Ensure that the January 12, 1994, Memorandum on the Exercise of Investigative Discretion document is distributed to all ORC attorneys and regional enforcement staff, and ensure that the content of this document is incorporated into training sessions on criminal enforcement which are periodically held for ORC attorneys and program enforcement staff;
- provide regional support for multi-media prosecutions of alleged criminal violations; and
- ensure 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.

#### **National Enforcement Investigations Center (NEIC)**

Regions will request NEIC support through the planning process established by OCEFT.

OCEFT is currently revising this process in coordination with ORE, the NEIC Division, and the regions.

**National Enforcement Training Institute**

Regions provide input on training needs and state priorities through the MOA process.

Training of Federal, state, local and tribal personnel will be conducted as approved in the annual NETI plan.

NETI monitors efforts to meet key training needs identified through the MOA process and incorporates them in the NETI plan.