

MEMORANDUM

SUBJECT: Fiscal Year 2003 OECA Memorandum of Agreement (MOA)
Guidance Update

FROM: Sylvia K. Lowrance
Principal Deputy Assistant Administrator

TO: Regional Administrators
State Environmental Commissioners

Attached is the Office of Enforcement and Compliance Assurance's (OECA) final Fiscal Year (FY) 2003 MOA Guidance Update. This update supplements the two-year FY 2002/2003 MOA Guidance issued on June 19, 2001.

OECA remains committed to implementing the limited number of national priorities and major activities identified in the FY 2002/2003 MOA Guidance. For FY 2003, we will continue to address the existing six national program priorities of Air Toxics/Adopt-a-MACT; Clean Air Act-New Source Review/Prevention of Significant Deterioration (NSR/PSD); Clean Water Act-Wet Weather; Petroleum Refining; Resource Conservation and Recovery Act-Permit Evaders and Safe Drinking Water Act-Microbials. In addition to these targeted, national priorities, EPA is committed to compliance monitoring and enforcement of core programs. OECA periodically assesses the core programs and identifies areas needing particular attention, often focusing on recalcitrants and repeat violators and ensuring timely and appropriate response to significant violators. OECA will continue its periodic assessment of core programs and identify targeted areas for action. Data quality improvements and system modernization will be particularly helpful in these efforts. The impending launch of the public Enforcement and Compliance History Online (ECHO) web site will require heightened attention, on the part of the Regions and the states, to maintaining a high level of data quality for core enforcement and compliance program data.

OECA has also identified two significant management priorities, (1) to improve data quality and management, particularly as it relates to the core program, and (2) to expand and improve compliance assistance and incentive programs. Data management is extremely critical because of its impact on all of our work; it affects the results of eleven of the OECA measures reported to the President and Congress through the Government Performance and Results Act (GPRA). Ensuring that high quality

data is correctly entered by each regional enforcement and compliance assurance program must be a personal priority for each senior program manager.

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This is particularly important in FY 2003 as we begin the phased implementation of the Integrated Compliance Information System (ICIS). Phase I of ICIS implementation was launched on June 24, 2002. The Agency's ability to identify and target serious noncompliance trends, and the most significant environmental and human health risks, will be enhanced as a result of more complete and better quality core enforcement program data tracked in ICIS. We must continue to collaborate with our state and tribal partners to assure the same effort on their part to providing quality and timely information to the Agency.

The second management priority, expanding and improving compliance assistance and incentives, is already widely embraced by the Regions and highlighting these areas is meant to encourage further efforts. For FY 2003, OECA will work with regional programs to enhance self-audit opportunities for the regulated community, advance the practice of compliance assistance by aiding the efforts of external assistance providers, develop and bring on-line additional web-based compliance assistance centers and integrating compliance assistance, compliance incentives, and enforcement strategies when appropriate to do so. Information further describing many of these activities may be found in my memorandum to the Regions dated February 25, 2002 titled, "Enhancing EPA's Compliance Assistance Programs."

This guidance update is being sent to Regional Administrators and State Commissioners concurrently; however, the regions are also requested to share this document with other appropriate state/tribal contacts that are not listed below. Regional MOAs are due to Headquarters by September 4, 2002. When submitting your MOA, please provide a hard copy to Frederick F. Stiehl, Director, Enforcement Planning, Targeting and Data Division, Office of Compliance, United States Environmental Protection Agency, Ariel Rios Building - Mailcode 2222A, 1200 Pennsylvania Avenue NW, Washington D.C. 20460. In addition, please submit an electronic version to (stiehl.frederick@epa.gov). If you have questions about the guidance, please contact Mr. Stiehl by e-mail or phone at (202)564-2290.

Your continued commitment to working with us to achieve our enforcement and compliance assurance goals for FY 2003 is sincerely appreciated.

Attachments

cc:	Assistant Administrators	Regional Councils
	Deputy Regional Administrators	Environmental Council of States
	Chairman, Tribal Operations Committee	State Associations
	OECA Office Directors	Steven Shimberg
	OECA Division Directors	Phyllis Harris
	Regional Enforcement Division Directors	
	National Association of Attorneys General	

Regional Enforcement Coordinators
U.S. Department of Justice
Regional MOA Coordinators
Regional Compliance Assistance Coordinators

**FY 2003 OECA
Memorandum of
Agreement (MOA)
Guidance Update**

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Introduction:

In June, 2001, the Office of Enforcement and Compliance Assurance (OECA) issued the FY 2002/2003 Memorandum of Agreement (MOA) Guidance which described the goals, priorities, and required major activities for the Agency's national enforcement and compliance program over this two-year period. OECA remains committed, for the second of this two year work planning cycle, to implementing the six national program priorities: Air Toxics/Adopt-a-MACT; Clean Air Act- New Source Review/Prevention of Significant Deterioration (NSR/PSD); Clean Water Act-Wet Weather; Petroleum Refining; Resource Conservation and Recovery Act-Permit Evaders and Safe Drinking Water Act-Microbials. Continuing to limit the number of national priorities focuses resources and activities on our top environmental, human health, and core program initiatives, as well as providing Regions and states the flexibility to redirect resources away from national priorities to address regional priorities, state priorities or important local problems when substantial justification for nonparticipation exists. It is important to note that because of the size and complexity of settlements in several of these priority areas, for several years into the future there will continue to be a necessary regional investment in consent decree implementation, monitoring and tracking. Appropriate resource demands for these activities should be reflected in your MOA updates.

Part I of this guidance provides the FY 2003 guidance updates to the priorities list and core program activities. Part II identifies the components of the FY 2003 MOA update expected from each Region as well as three attachments to be included as part of the submission. Attachment 1 provides the annual inspection projection charts. Please note that a new compliance assistance activities chart has been added to Attachment 1 for tracking Federal compliance assistance activities; instructions are included on the form. Attachment 2 describes the process for submitting support needs to NEIC for the next fiscal year. Finally, we are requesting that the Regions submit revised FY 2003 resource information charts for Goal 9 - Attachment 3.

Regional submissions are due to Headquarters on September 4, 2002. Please keep in mind that each Region's update will be considered an addendum to its FY 2002/2003 MOA and, as such, we expect relatively short updates focusing only on significant updates or adjustments and annual inspection projections.

Part I: MOA FY 2003 Guidance Updates

As mentioned above, we are not changing the FY 2002/2003 national priorities for the enforcement and compliance program. These priorities are listed below and are described in greater detail in the FY 2002/2003 MOA guidance, which can be found at: <http://www.epa.gov/oeca/main/strategy/2002moa.pdf>.

FY 2002/2003 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

We believe that implementing activities to address these priority areas are still crucial to accomplishing our program goals of improved compliance and reduced risks to human health and the environment. To date, while progress has been made, these six areas remain top priorities that require focused attention and resource commitment in FY 2003.

A. Revisions/Updates to Existing Priorities: Included below are only the RCRA permit evaders and the petroleum refining priorities that have wording changes or refinements from the FY 2002/2003 guidance. Wording changes are highlighted in **bold**.

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 of hazardous wastes containing lead and other pollutants;**
- C Illegal treatment, storage, and disposal of wastes that are no longer exempt under the Bevill amendment;
- C **Illegal disposal** of hazardous wastes containing lead and other pollutants in illegal RCRA 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 operations have resulted in the illegal releases of lead, cadmium, and other pollutants** to the environment. Illegal waste handling and management operations present significant environmental threats. **Renegade entities also financially undercut competing firms, jeopardizing the economic prosperity of compliant firms.** Thus, a national focus is warranted for these operations.

We continue to find significant RCRA-related, noncompliance issues at foundries **pertaining to the operation of certain illegal waste treatment units (i.e., firms using thermal reclamation units to treat hazardous wastes).** These noncompliance issues can be nationally significant in scope and therefore, Regions should consult with EPA Headquarters before addressing environmental concerns associated with these units.

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-related** activities (including “homeland security” matters). Each strategy **will include the appropriate performance measures and**

address the following: **goals for improving the compliance rate for a given sector;** identification of high risk facilities, areas, and/or communities of highest priority; compliance monitoring approach; State involvement; **opportunities for outreach and assistance;** **opportunities to use innovative approaches to environmental protection;** enforcement response options; settlement approaches; and time frames.

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, assistance, and outreach** opportunities. Opportunities to achieve significant environmental benefits beyond regulatory compliance levels (e.g., voluntary reductions in emissions) should be pursued where appropriate. **Regions are** encouraged 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 (PBT) 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. **Special emphasis should be given to measuring environmental results (e.g., annual quantity of wastes illegally treated, managed, or disposed; number of facilities with illegal waste management operations).**

PETROLEUM REFINING

Exit Stage of the Strategy:

During FY 2003, the emphasis in the petroleum refining strategy will shift to conclude work on the priority. Out of the 157 refineries nationally, based on data compiled by Headquarters, 37 have received no action to date and 8 were deemed inconclusive after a preliminary investigation. Regions are requested to confirm these numbers. It is anticipated that by October 2003, of the 45 refineries referred to above (37 no actions, 8 inconclusive), each will have been investigated for the four “marquee” issues which are PSD/NSR, LDAR, benzene waste, and flaring/NSPS or will be under an enforcement

action. When possible, the regions should engage any of the remaining 45 facilities in settlement negotiations. The regions may defer the investigations of companies that do enter into settlement negotiations which will result in fewer than 45 investigations. For those companies that do not engage in settlement negotiations, regions should proceed with investigations which can result in notices of violation and referrals.

Nationally, the approach for the Petroleum Refining Priority will be to:

1. Complete any remaining corporate-wide negotiations and all pending federal investigations;
2. Assess refineries that have not been investigated;
3. Build state capacity to conduct investigations primarily at facilities not reached by the national initiative; and
4. Determine to extend or conclude the Petroleum Refining Priority.

Expected Regional Activities:

As we begin this next phase of the strategy for FY2003, each region is to develop a plan detailing how they will address the remaining refineries that have not been investigated for the four marquee CAA issues which or, that were not part of the global settlements. This plan should:

1. Identify all remaining refineries for each of the marquee issues;
2. Prioritize marquee issue activities at refineries not currently being addressed;
3. Articulate the basis for such prioritization; and
4. Ensure regional resources are dedicated to consent decree implementation, monitoring and tracking.

This prioritization may be by refinery, by marquee issue, or by a combination of both. The plan should also explain how and when compliance with each marquee issue will be determined at each remaining refinery. (This can be through a combination of regional and state activities.) The plan should include a description of how regions will work with their states to achieve established goals. This should include communicating with and involving the states regarding their role in compliance monitoring, case development and enforcement.

For nationally directed cases, the regions should actively participate in all settlement discussions and in all CAA enforcement actions resulting from inspections or investigations taking place in their regions in FY 2003.

MOA Submission Expectations: Each region should submit an exit strategy plan outlining their planned activities to address the expected regional activities described above. The plan should show how all refineries will be evaluated regarding the four CAA marquee issues by the end of FY 2003. Additionally, each region should provide examples

of activities they are planning to undertake to build state capacity to increase the states' ability to determine compliance of the marquee issues.

B. Core Program Activities - In addition to the FY 2002 core activities, the following activities should be considered when developing your FY 2003 MOA agreement:

Expand and Improve Compliance Assistance and Incentive Programs

Since FY 2001, OECA has emphasized the greater use of compliance assistance (CA) and compliance incentives (CI) to improve compliance in many industry sectors. For FY 2003 OECA wants to foster self-audit opportunities for the regulated community; advance the practice of compliance assistance by aiding the efforts of external assistance providers; develop and bring on-line additional web based compliance assistance centers; encourage the development and use of Environmental Management Systems; and continue to support innovative approaches to improved compliance.

In the area of compliance assistance, OECA has taken a number of actions to enhance its compliance assistance efforts. A memorandum entitled "Enhancing EPA's Compliance Assistance Program" was signed by Sylvia Lowrance, OECA Acting Assistant Administrator, on February 25, 2002 and sent to the Regional Administrators. The memorandum outlines the recommendations and steps to be taken to enhance the compliance assistance programs and announces the formation of the Compliance Assistance Policy and Infrastructure (CAPI) Steering Committee. The first CAPI steering committee meeting was held on April 11 and 12 and discussions focused on developing a strategy to pilot integrated strategies in FY 2003 across the regions that will include measurable results for compliance assistance.

When submitting your updates and modifications to your regional priorities please include any compliance assistance activities or tools that you are planning to utilize. To assist the regions as they consider sector and media areas to address as potential regional priorities, OECA has compiled a list of compliance assistance tools. A list of the compliance tools can be found at <http://cfpub.epa.gov/clearinghouse>.

Improve Data Quality and Management

Reporting accurate and timely data into OECA's national compliance data systems is critical to manage the Headquarters, regional and state compliance programs and to ensure that the public receives credible information. There is a continuous need to improve the overall quality of the Agency's compliance data and there are many activities currently underway to achieve this goal. Major FY 2002 core activities included: (1) implemented Phase I of the Agency's Integrated Compliance Information System (ICIS) to track and analyze program outputs; (2) implemented a data quality strategy to identify and correct inaccurate data in existing systems; and (3) identified data requirements and began development of data elements and

standards to assist HQ in the development of ICIS Phase II which is a modernized Permit Compliance System (PCS). In FY 2003, regions will need to utilize core resources to assist Headquarters in completing the data element and standards work begun in FY 2002, and to assist in system design, i.e. report development, screen development and system functionality.

Criteria for EPA Inspection Authority: State and Tribal Inspectors

Regions are now required to use the **Criteria for EPA Inspection Authority: State and Tribal Inspectors** when determining whether or not to authorize state and/or tribal inspectors to conduct inspections on behalf of the Agency. As part of this responsibility, Regions should monitor key information related to implementing the Criteria. The key elements of the Criteria that each region will need to implement are describe in Appendix N of the above reference criteria which will be transmitted to each region under separate cover.

Part II: FY 2003 MOA Submission Format

By September 4, 2002, Regions should submit, as an addendum to their FY 2002/2003 MOA, a memorandum from their Regional Administrator to Sylvia K. Lowrance, OECA Principal Assistant Administrator, attaching the following information:

- A. Regional Updates and Modifications
- B. Annual Inspection and Compliance Assistance Federal Activity Projection Charts
- C. Headquarters and NEIC Support Requests
- D. FTE Resource Charts

A. Regional Updates and Modifications

Regions should describe any adjustments which they plan to make in FY 2003 regarding implementation of their existing MOA priorities. The Region should explain the basis for the changes as well as the expected results. This section of the update provides the Regions with the opportunity to discuss such areas as progress or delays/changes in their implementation efforts for either national or Regional priorities or adjustments needed to reflect joint work planning with their states. The Region should focus on **significant changes** which impact their enforcement and compliance approach established in the current MOA. This discussion could also include any new information, ranging from environmental data to organizational changes, that may affect implementation of their MOA.

B. Annual Inspection and Compliance Assistance Activity Projection Charts

A new compliance assistance activity projection chart has been to added to Attachment 1 for FY 2003 reporting cycle. The chart and the process for projecting compliance assistance

activities was piloted with Regions 1, 3, 6, 8 and 9 in FY 2002. Please note that this chart does differ from the inspection projection charts in that it is to be used for projecting **Federal compliance assistance activities only**. Also included in Attachment 1 are the forms for the FY 2003 inspection reporting measures that require projections from both the regions and states. Information comprising both regional and state activities provide key information necessary for national program planning, management and implementation. Except for the compliance assistance activity projection chart, please include state projections along with the Federal projections. Specifically, Regions should complete the following forms:

- NPDES/Pretreatment Inspections
- Drinking Water Fixed Base SNC
- RCRA Inspections
- TSCA Inspections
- EPCRA Inspections
- Air Investigations and Inspections
- FIFRA Inspections
- Compliance Assistance Federal Activity Projections

C. Support Requests

Under this section of their submission, Regions should indicate the support they are requesting from Headquarters OECA and from NEIC to assist in implementation of their MOA activities. Attachment 2 provides the information NEIC is requesting by July 8th, 2002, to start their review and commitment process.

Regional requests for support **should not** include requests for extramural dollars or increased FTE. Those requests will be addressed outside the MOA process. Support requests with the MOA submission should **only** pertain to programmatic issues such as the need for technical guidance documents, compliance and enforcement strategies, or training.

D. FTE Resource Charts

Attachment 3 contains the FTE resource charts similar to the charts completed as part of the FY 2002 MOA process. The charts are organized by goal, objective and sub-objective and then cross-walked to the media program elements. The importance of the FTE Resource Charts has been growing significantly because of increasing interest from the Office of Management and Budget, the Inspector General and Congress. It is imperative that these charts be completed and sent with the FY 2003 MOA submittal package.

2001 Regional Final - This column of information contains the same as the information submitted in your FY 2002 MOA. It should represent each region's budget allocation, derived

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from the Agency's FY 2001 Enacted Operating Plan. It was originally provided to your Budget Officers November 2000.

2002 Regional Final - This column is blank and should reflect the final FY 2002 FTE. This number will need to be revised because regions were directed to use the FY 2002 President's budget in preparing the MOAs which included a 270 FTE OECA-wide reduction. Because the final FY 2002 FTE allocations were not finalized until January 2002, and did include a partial restoration, we will need to see your revised FTE allocations by media. Regions are being requested to fill in this column with final regional FY 2002 resource numbers.

2003 Proposed - This column is blank and the information is to be provided by the regions in the FY 2003 MOA submittal package due in September 2002. Headquarters will provide the regions with FTE levels requested in the President's Budget during Phase I of the FY 2003 operating plan. We recognize that FTE levels may change after the Agency receives the FY 2003 enacted budget after October 1. Therefore, Headquarters will work with the regions to determine a more appropriate FTE resource chart completion time frame.

NETI training course outline is also included in this attachment.

ATTACHMENTS:

Attachment 1: Reporting Forms For FY 2003 Projections

Attachment 2: NEIC Support Requests

REPORTING FORMS FOR FY 2003 PROJECTIONS

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

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 2003 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 2003 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 2003.

! 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 2003

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 2003. 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.)

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

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)				
Totals				

** 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.

REGION/ PROGRAM	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 2003

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.

Pesticides Enforcement Cooperative Agreement Output Projections												
Inspection Projections State-by-State	Agricultural		Nonagricultural		Experi- mental Use	Produc- ing 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 2003 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 2003 MOA submittal due in September 2002.

Region _____ FY 2003 Inspections for Statistically Valid Noncompliance Rates Effort	
Population (Sector/Regulation)*	Number of Projected Inspections**
Populations for FY 2003 TBD	

*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 ¹ multimedia inspections	
	Coordinated ² multimedia inspections	

¹A 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.

²To 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.

Compliance Assistance Activity Projections

This chart is a new addition to the MOA process. In FY 2002 the MOA process for compliance assistance was successfully piloted with Regions 1, 3, 6, 8, and 9. The information from the pilot process provided a more strategic view of the National Compliance Assistance Program and illustrated the value of projecting compliance assistance activities. **This chart is for reporting federal compliance activity projections only. This includes specific State compliance assistance projects funded by individual EPA grants.**

This chart can be generated by the Compliance Assistance Planning Database (CAPD). Activity level data must be entered into CAPD to generate the roll-up summary below. The CAPD is located at: <http://www.otis.abtassoc.com/capd/> (You will be prompted for the following: user name: epacapd and password: assist0307) In order to use this automatically generated form, the activity must be designated as a compliance assistance "MOA projection" in CAPD and you will be required to select the priority area supported (categories below) and complete the follow-up measurement question. Some activities may include more than one compliance assistance outreach method; thus multiple selections are allowed (i.e. one activity with tools developed for a workshop). The final Regional roll-up of the compliance assistance "MOA projections" can be generated by pressing the MOA form button in CAPD .

Definitions for the compliance assistance activity categories are included below.
 Contact: Rochele Kadish 202-564-3106

Region___

Priority Area	Number of Activities	Tools Developed	Workshop/Training	Hotlines/WEB sites	Onsite visits	Number of Activities with measurement
National OECA MOA Priority						
National OECA MOA Core						
Other Program MOA (Air, Water, Toxics...) Priority						
Regional Priority						
Other (cross-programmatic priorities, e.g., children's health, environmental justice, etc.)						
TOTALS						

FOR ALL CATEGORIES: One project with multiple outputs (tools, workshops...) will be counted as one project and x outputs. For example: training for hospitals with 4 training sessions will be counted as one project and four workshop/training.

Compliance Assistance Activity Projections (con't)

Tools Developed: The development or modification of all forms of printed materials (e.g., newsletters, fact sheets, information packets, brochures) as well as videos, slide shows. Tools also include plain language guides, self-audit checklists, and expert systems. Tools intended to help the regulated community, other compliance assistance providers and the public understand environmental requirements.

Workshop/Training: Events that are sponsored in whole or in part by EPA to educate regulated entities, other compliance assistance providers or the public understand environmental requirements or outreach/education events that are not sponsored by the program but where EPA is called upon to do an educational presentation. Training for federal, state, local or contractor inspectors to conduct inspections is **not** compliance assistance.

Hotlines/WEB sites: Actual use and maintenance of toll-free hotlines and publicly available web sites, including Clearinghouses, Compliance Assistance Centers, and fax back services.

Onsite Assistance: Facility visits to provide technical assistance, compliance assistance, environmental management reviews and pollution prevention assessments, or any other time where EPA is **not** representing itself as an official inspector.

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 **July 8, 2002**. It is important that NEIC receive all regional submissions by July 8th, 2002 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:

- C Is it anticipated that the training courses listed will remain in high demand during FY 2002/2003?
- C 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?
- C 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.
- C What additional training courses are needed?