

**DRAFT FY 2010**

**Office of Enforcement and**

**Compliance Assurance (OECA)**

**National Program Manager (NPM) Guidance**

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## **EXECUTIVE SUMMARY**

### **SECTION I: INTRODUCTION**

#### **I. Program Office**

Office of Enforcement and Compliance Assurance National Program Manager (NPM) Guidance.

#### **II. Introduction/Context**

The National Program Manager (NPM) guidance for OECA sets forth national program priorities and activities for the enforcement and compliance regulatory programs for FY 2010. EPA's national enforcement and compliance assurance program is multi-media in scope and breadth.

#### **III. Program Priorities**

OECA selects a limited number of national program priorities based upon significant environmental risks and noncompliance patterns. At the end of FY 2007, EPA re-examined the existing priorities to look for opportunities to clarify goals and measures, more accurately identify priority universes, and, in some cases, to change the focus of a priority when necessary. After consulting with EPA programs and regions, states, and tribes, EPA decided to continue the priorities established in FY 2005-2007 for the FY 2008-2010 cycle. The following are the national enforcement and compliance assurance priorities:

- Clean Air Act: Air Toxics
- Clean Air Act: New Source Review & Prevention of Significant Deterioration
- Indian Country Drinking Water Systems, Schools and Waste
- Reduction of Water Pollution from Concentrated Animal Feeding Operations, Sewers, and Stormwater under the Clean Water Act
- Financial Responsibility for Hazardous and Toxic Waste
- Resource Conservation and Recovery Act Mineral Processing

Since these National Priorities were established in FY2005, a Planning Council made up of OECA Office and Regional senior enforcement managers have provided guidance, suggestions, and approvals for the evolving priority strategies, goals, and measures. The Planning Council is being restructured to address a wider scope of issues that are of concern to senior regional enforcement managers and OECA Office Directors. As part of this restructure, a new National Priorities Governance Board will serve as the general oversight and decision-making body for the National Priorities. This Board will determine when issues need to go to the broader group of Enforcement Directors or the OECA National Program Manager (NPM) for discussion and resolution.

The Governance Board will institute an annual review process for the national priorities in FY2009. The review will encompass the following: progress towards the goals identified in

the strategies; issues encountered during implementation and how to address them; and updates to the strategies to reflect change identified during the review. The FY2009 priorities review will also incorporate specific updates to the strategies required as the result of two Inspector General reports. These changes will be implemented in FY2010 through the Strategy Implementation Teams for each of the national priorities.

#### **IV. Implementation Strategies for the National Core Program**

The national program maximizes compliance with 10 distinct federal environmental statutes through compliance assistance, incentives, monitoring, and enforcement. OECA implements a total of 28 separate program areas under ten statutory programs dealing with prevention and control of air pollution, water pollution, hazardous waste, toxic substances, and pesticides. The statutory and regulatory requirements of these programs apply to a diverse universe of regulated entities. The majority of the work in the FY 2010 National Program Manager guidance is accomplished under the strategic goal for compliance and environmental stewardship in the FY 2009-2014 EPA Strategic Plan (Goal 5). The Agency has developed EPA's 2009-2014 Strategic Plan Change Document which focuses on the areas that have changed from the previous Strategic Plan. ([http://www.epa.gov/ocfo/plan/pdfs/strategic\\_plan\\_change\\_document\\_9-30-08.pdf](http://www.epa.gov/ocfo/plan/pdfs/strategic_plan_change_document_9-30-08.pdf)). The final Strategic Plan is due to Congress on September 30, 2009.

The Office of Enforcement and Compliance Assurance monitors regional and state activities in a subset of annual commitments under core programs, at a minimum, at mid-year and at the end of a fiscal year based upon regional and state results entered in OECA databases, the Annual Commitment System, and data for national priorities. The performance expectations and activities outlined in this guidance are the starting point from which headquarters and the regional offices engage to discuss the management of program activities and the distribution of resources. These discussions result in regional commitments for a specific level of activity for the fiscal year. These commitments constitute the agreed upon approach between the regions and the national program managers for achieving performance expectations in the core program and national priority focus areas for the fiscal year.

Many of the annual commitments in the measures appendix and activities associated with the core enforcement and compliance assurance program, as well as the national priorities, also support regional priorities. For example annual commitments on inspections and assistance to concentrated animal feeding operations support regional agriculture priorities. The air toxics national priority and accompanying commitment supports the regional priorities for air toxics. Core program implementation and results for TSCA lead enforcement support the regional priority for lead poisoning. The national priority for RCRA mineral processing supports the regional priority for mining. Implementation of national priorities and associated annual commitments on stormwater, combined sewer overflows, and sanitary sewer overflows support regional priorities for wastewater, drinking water quality, nutrients, and sedimentation.

## **V. Significant Changes from FY 2009**

Because of the change to the Strategic Plan structure for FY2010, this Guidance has been significantly modified from the FY2009 Guidance. Since 2003, Goal 5 of the EPA Strategic Plan, OECA's sub-objective structure has been tools-based (assistance, incentives, monitoring and enforcement). With the development of the new Strategic Plan this structure is moving to a "problem-based" structure (air; water; waste, toxics, and pesticides; and criminal enforcement sub-objectives)

Reflecting the change in the Agency Strategic Plan, this NPM Guidance now discusses each National Priority and Core program under the appropriate sub-objective section. OECA also has numerous programs that contribute to the goals and targets of more than one sub-objective. Those programs are located in a separate section. In addition, the general discussion of the tools that are used, including compliance assistance, incentives, and monitoring and enforcement, have been moved to Section II.

The Inspector General recently conducted an evaluation of the CAA 112(r) program titled, "EPA Can Improve Implementation of the Risk Management Program for Airborne Chemical Releases." As a result of the evaluation, the IG recommends that EPA focus more compliance and enforcement efforts on facilities that pose a greater risk to human health and the environment. In response to this recommendation, OECA is proposing a modification to the 112(r) performance expectation. This modification would require Regions to devote 10% of their inspections to high-risk facilities. OECA is also modifying the criteria used to determine which facilities should be classified as high-risk. Finally, in an effort to create a more integrated program to address chemical accident prevention, OECA is also proposing to include applicable EPCRA and CERCLA requirements in high-risk facility inspections.

For general questions or comments on the National Program Guidance for the Office of Enforcement and Compliance Assurance or our Annual Commitments please contact:

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## **SECTION II: OECA GUIDANCE DEVELOPMENT AND FEEDBACK PROCESS**

The OECA NPM Guidance is structured and developed to define program priorities, strategies, and performance measures in accordance with the Strategic Plan and the FY 2010 Annual Plan and Budget. Most of OECA's work is in response to the objectives of Goal 5 of the Strategic Plan and is covered by this Guidance.

### **I. Guidance Development and Feedback Process for OECA's Goal 5 functions**

The NPM guidance development process provides OECA the opportunity to define for FY2010 a clearer line of sight between the annual operational measures, annual budget measures, and long-term, strategic measures. In addition, this process is an opportunity for the EPA Headquarters and Regions to engage with state and tribal partners and stakeholders in assessing results through more transparent and streamlined Agency processes.

OECA Offices have restructured the NPM Guidance and made appropriate modifications to the narrative of their programs or national priorities, commitment measures, and then highlighted significant changes from the Program in FY2009. EPA will post the FY 2010 NPM draft guidance ([www.epa.gov/ocfo/npmguidance](http://www.epa.gov/ocfo/npmguidance)) to allow regions, states, tribes, and others to review and comment on the draft. During this time, OECA will engage in a dialogue with regions, states, tribes, and other stakeholders, as appropriate, to gain input. OECA will respond to the comments and incorporate changes, as needed, in the final documents. A Response to Comments Summary will be posted on the internet showing the action taken in the final guidance as a result of comments.

Because the final Strategic Plan structure will not be finalized until later in the Fiscal Year, there may be changes that will impact this Guidance. OECA will develop and issue addendums explaining any changes and implications for regions, states, and tribes as a result of the changed Strategic Plan.

### **II. Goal 3 OECA programs**

The majority of OECA Programs fall under Goal 5 of the Strategic Plan: Compliance and Environmental Stewardship. However, planning for Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) enforcement and the RCRA Corrective Action program commitments are covered under Goal 3 of the Agency's Strategic Plan: Land Preservation and Restoration (Subobjective 3.2.2: Clean Up and Revitalize Contaminated Land)

It is important for regions to address Superfund and RCRA Corrective Action program commitments for Goal 3. EPA develops and conveys national program direction for Superfund activities through the Superfund Comprehensive Accomplishment Planning (SCAP) process. RCRA Corrective Action is in the Office of Solid Waste and Emergency Response (OSWER) NPM Guidance.

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



### **SECTION III: USE OF INTEGRATED STRATEGIES TO ACHIEVE PROGRAM GOALS**

Ensuring compliance whether in a priority area or core program involves the use of all available tools including compliance assistance, compliance incentives, compliance monitoring, and civil and criminal enforcement to address specific environmental risks and noncompliance patterns. In using these tools in the national program, there are certain fundamental activities and requirements for all core functional areas.

#### **I. Tools: Compliance Assistance**

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

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

1. A strong regional compliance assistance core program infrastructure:
  - A full-time regional compliance assistance coordinator to provide a focal point for planning and coordination of compliance assistance efforts;
  - Communication networks within the region, across regions, with headquarters, states, tribes, and external environmental assistance providers;
  - Mechanisms to coordinate and strategically build compliance assistance into national, regional, state, and tribal planning processes.
2. Strategic planning for up front consideration and appropriate use of compliance assistance in addressing environmental problems:
  - Plan and coordinate compliance assistance across organizational and programmatic boundaries (e.g., media programs, enforcement, environmental justice, small business) and include states, tribes, and other stakeholders in this process;
  - Use integrated strategic approaches to target and address environmental problems, and consider all available tools, such as compliance assistance, compliance incentives (self-audits, opportunities for pollution prevention and Environmental Management Systems (EMS)), compliance monitoring, and enforcement (See

February, 2007, Guide for Addressing Environmental Problems: Using an Integrated Strategic Approach

(<http://www.epa.gov/compliance/resources/publications/assistance/measures/comeasuring.pdf>).

- Ensure appropriate use of compliance assistance in the implementation of integrated and performance-based strategies for both national and regional priorities.

3. Tracking and measuring results of compliance assistance activities:

- Report on planned and actual compliance assistance projects into the compliance assistance module of the Integrated Compliance Information System (ICIS). For completed CA projects, report all outputs and outcomes into ICIS. For on-site visits and revisits, the Compliance Assistance Conclusion Data Sheet (CACDS) should be used to record these outcomes and facilitate data entry into ICIS.
- Conduct appropriate measurement activities to collect outcome information for direct assistance activities to determine increased understanding, improved environmental management practices, and pollution reduction outcomes achieved as a result of the compliance assistance provided. OECA may not have an approved generic ICR in 2010 for conducting follow-up surveys, see Continuing to Measure Results from Compliance Assistance Activities in FY2009 without a Generic ICR (signed by Lisa Lund December 19, 2008) <http://intranet.epa.gov/oeca/oc/resources/caspd/cacoordinators/measurement/continuingcaactivities.pdf> and the attached Reference Guide for Measuring Compliance Assistance Outcomes in 2009 <http://intranet.epa.gov/oeca/oc/resources/caspd/cacoordinators/measurement/referenceguide.pdf>

**Commitment ASST01:** Conduct outcome measurement for 100% of all compliance assistance workshops/training, on-site visits and revisits which support the OECA national priorities and report the results of these outcomes into ICIS. Report on exceptions to the 100% and provide brief explanations in the ACS.

4. Providing compliance assistance targeted to appropriate problems, sectors, and geographic areas directly or through other providers (states, tribes, pollution prevention providers, etc.)

- Develop compliance assistance tools, conduct training, workshops, presentations, on-site visits, and/or distribute outreach materials;
- Share compliance assistance tools and opportunities within the regions and externally, e.g., with states, tribes, trade associations;
- Serve as a wholesaler of compliance assistance to enable other providers to offer assistance, including, for example, providing training and tools to providers;

- Continue partnerships with industry, academics and environmental groups to support the sector-specific Compliance Assistance Centers; Explore collaborative opportunities between the Compliance Assistance Centers and EPA Program Offices to develop and promote compliance assistance resources.
- Market and wholesale compliance assistance opportunities and tools, and share success stories.

## **II. Tools: Compliance Incentives**

EPA promotes compliance through the use of incentive policies. These policies reduce or waive penalties under certain conditions for facilities which voluntarily discover, promptly disclose, and correct environmental problems. EPA encourages the use of EPA's Audit Policy, Small Business Policy and Small Community Policy, various compliance incentive programs, compliance auditing protocols, and environmental management systems that result in actions that reduce, treat, or eliminate pollution in the environment or improve facility environmental management practices (EMPs).

EPA promotes the use of the Audit Policy and focuses on *corporate-wide auditing agreements* to implement the Policy, assess and maintain compliance, consolidate transactions, and maximize penalty certainty. EPA also encourages audits and disclosures that achieve significant environmental outcomes. EPA offers incentives tailored to encourage use of the Audit Policy by "new owners" after merger & acquisition transactions since new owners may be particularly well-situated and highly motivated to focus on, and invest in, making a clean start for their new facilities by addressing environmental noncompliance. EPA is piloting a web-based tool to speed the submission of complete disclosures of routine recordkeeping and reporting violations and to expedite processing and resolution of routine disclosures. Under various Compliance Incentive Programs (CIPs), individual entities or members of a sector disclose and correct violations in exchange for reduced or waived penalties, while the risk of enforcement increases for those not taking advantage of this opportunity. EPA promotes the disclosure of environmental information in accordance with the SEC's mandatory corporate disclosure requirements as a means of promoting improved environmental performance. Increasing public access to corporate environmental information maintains a level playing field for companies, and raises company awareness concerning environmental issues.

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

- Participate in compliance incentive programs directed at particular sectors and/or noncompliance problems, with emphasis on violations that impact areas with environmental justice concerns, and violations that, once corrected, are likely to result in measurable pollution reductions.
- Promote EPA's compliance incentive policies (e.g., Small Business Policy, Small Local Governments Compliance Assistance Policy, Audit Policy)

(<http://www.epa.gov/compliance/resources/policies/incentives>), with the assistance of state, tribal, and local agencies, to encourage the regulated community to voluntarily discover, disclose, and correct violations before regulatory agencies identify entities for enforcement investigation or response.

- Follow-up on, as appropriate, self-disclosures submitted under the EPA Audit Policy and Small Business Policy.

### **III. Tools: Monitoring and Enforcement, Oversight Inspections, Civil Enforcement**

#### **Compliance Monitoring:**

All regional programs should conduct appropriate compliance monitoring activities, which include all regulatory agency activities 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 enforcement orders and settlement agreements, EPA documents and files compliance determinations using various methods (e.g., databases, inspection reports, etc.). Compliance monitoring activities occur before and until the point when either compliance is determined or an actual violation is identified. Review and oversight of authorized state, local and Tribal compliance assurance and enforcement programs continues throughout the year. As in the past, NEIC will continue to support ongoing projects for commitments made in previous years, including case preparation and enforcement support.

EPA strongly encourages efforts to provide field inspectors with technology that will improve their capacity to collect, share, and report information. Regional managers and staff should utilize the Field Activity Compliance Technology Strategy (Strategy) to guide their efforts to utilize hardware and software to collect compliance monitoring data by automating specific workflow processes for the specific programs.

Examples of important compliance monitoring activities include:

#### Inspector support

- Training to fulfill the requirements of EPA Order 3500.1, and other applicable Orders (1440.1, 1440.2, etc.);
- Implementing the OC guidance, *Final National Policy, Role of the Inspector in Providing Compliance Assistance During Inspections, June 25, 2003*;
- Issuing and tracking federal credentials to state and tribal compliance inspectors pursuant to the September 30, 2004 memorandum entitled *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* and the August 5, 2005 memorandum *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf* to ensure inspectors are appropriately trained and credentialed.

### Monitoring planning and execution

- Developing compliance monitoring strategies in conjunction with OECA and states that include targeting and information gathering techniques;
- Creating a viable field presence and deterrent by conducting compliance inspections, evaluations, surveillance, and civil investigations (including sampling as necessary), in all the environmental media programs (authorized and non-authorized);
- Responding to tips, complaints, and referrals from private citizens, other governmental entities, and non-governmental organizations;
- Identifying potential environmental crimes through the civil compliance monitoring program, and referring to Regional criminal investigation division (CID) area offices.

### Data collection, review, and reporting

- Performing compliance data collection, reporting, analysis, evaluation, and management;
- Reviewing and evaluating self-reported data and records, environmental permits, and other technical information relating to compliance with environmental laws and regulations;
- Maintaining compliance files and managing compliance records;

Preparing reports and entering compliance findings and inspection results into national databases.

- Reporting GPRA outcomes of on-site inspections and evaluations into ICIS for the Inspection Conclusion Data Sheet (ICDS) and proposed Expedited Settlement Orders, and by analyzing and evaluating the outcomes of compliance monitoring activities.

### Program coordination/review/oversight/support

- Ensuring that the implementation of state, local and Tribal programs are in accordance with statutory requirements and EPA policy;
- Identifying, tracking, and coordinating with state, tribal, and local environmental agencies those violators that are, or should be designated as, Significant Noncompliers, High Priority Violators, or Watch List facilities;
- Developing, negotiating, or overseeing state or tribal compliance and enforcement grants;

- Providing training, assistance, support, and oversight of state, local and tribal programs;
- Performing compliance screens for various headquarters and/or state/tribal programs such as Performance Track; and
- Conducting reviews under the State Review Framework (SRF).

### **Oversight Inspections:**

A federal oversight inspection evaluates the quality of the state inspection/evaluation program and the state inspector training program by reviewing and evaluating the findings of state inspections and evaluations. Oversight inspections identify strengths and weaknesses of state programs and develop mutually agreed upon commitments by the states and EPA to correct problems. When regions conduct oversight inspections, they should follow these guidelines:

- Only experienced EPA personnel should be used to conduct oversight inspections.
- The overall goal of oversight is to improve the state (and regional) compliance and enforcement program.
- Oversight should be tailored to fit state performance/capability, once it has been documented.
- EPA should observe procedures the state inspector follows or does not follow (e.g., credentials, purpose of inspection, entry conference, interview, field observations, record reviews, CBI procedures, exit interview, etc.).
- The EPA inspector should determine whether the state inspector:
  1. Follows state inspection and monitoring procedures
  2. Detects potential violations, especially SNCs, and gathers evidence to support violations
  3. Has adequate training and guidance
  4. Has adequate safety equipment and field equipment
  5. Has informed the facility of the subject regulations
- EPA should coach/inform the state inspector of potential concerns observed or discovered through questioning the state inspector after the oversight inspection is completed, and report findings and observations to regional managers by preparing a separate oversight inspection report for each oversight inspection so that any issues observed can be addressed in discussions with state managers and/or during the SRF review process. Regions can utilize the procedures described in more detail in the RCRA State Oversight Inspection Guide, dated December, 1987 for conducting

oversight inspections and for preparing inspection reports:

<http://www.epa.gov/Compliance/resources/policies/civil/rcra/rcrastosinspgu-rpt.pdf>.

- EPA oversight of state performance should be consistent with the following principles from the August 25, 1986, Barnes memo entitled, “Revised Policy Framework for State/EPA Enforcement Agreements.”
  - a. Both positive and negative findings should be identified.
  - b. EPA should provide technical assistance and training when needed.
  - c. EPA action to correct problems should vary, depending on the nature and impact of the problem and if it reflects a single or multiple incidents.
  - d. The States should be given an opportunity to formally comment on EPA's performance relating to commitments made by EPA to the state, e.g., provide training, assist with sampling, provide equipment, etc.
  - e. Regions should provide all information to the states that is available on their performance.
  - f. The Region should report to the state on progress toward commitments made to that state.
  - g. EPA should give states sufficient opportunity to correct identified problems
  - h. EPA should use oversight inspections as a means of transferring successful regional and state approaches from one state to another.
  - i. Where state performance fails to conduct quality inspections or evaluations, EPA may: (a) suggest changes in state procedures; (b) suggest changes in the state use of resources or training of staff; (c) provide technical assistance; and/or (d) increase the number of oversight inspections and/or require submittal of information on remedial activities.

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

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

#### **IV. Support for Programs: Data Quality and Reporting**

OECA continues to strive to improve the quality of enforcement and compliance data and assure this information is a useful tool to manage the program and to reliably report on accomplishments. This effort to improve and attain a high level of confidence in performance information focuses on two areas: data quality and reporting. Data quality, accuracy and completeness are also elements of the SRF, and through Framework reviews, regions should ensure that states enter all required data into the national systems of record in a timely way.

Each OECA office and region should have an approved Quality Management Plan establishing the office's procedures for ensuring the sound collection and use of enforcement and environmental data

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

- quarterly data quality reviews of enforcement and compliance data,
- timely entry of data (i.e., within two weeks after occurrence of the activity),
- mid-year and end-of-year certification by Senior Managers of data completeness and accuracy, and
- Use of IPOD (ICIS Policy on Demand), a desktop accessible and searchable repository of information on data entry to ICIS

OECA issues an annual Enforcement and Compliance Reporting Plan each fiscal year that provides core and national priority reporting requirements, GPRA measures, schedules/deadlines, contacts, etc. This memo is OECA's comprehensive guide to the annual enforcement and compliance reporting requirements covering the various enforcement and compliance program tools (e.g., compliance assistance, compliance monitoring, compliance incentives, enforcement) in all media program areas (e.g., CAA, CWA, FIFRA, RCRA, TSCA, CERCLA).

Regions must enter all federal enforcement cases in ICIS, the database of record, and also in the associated legacy system, if one exists. Applicable CCDS information on all concluded actions, ICDS information on inspections, and applicable CACDS data on compliance assistance activities also should be entered into ICIS. For CAA, RCRA, and CWA/NPDES inspections in states not migrated to ICIS-NPDES, the legacy systems (e.g., AFS, RCRAInfo, PCS) are the data bases of record for Federal inspections, violations, significant violators (SNCs)/high priority violators (HPVs). ICIS-NPDES is the database of record for federal inspections for all states that moved from PCS to ICIS-NPDES.

Until a state or tribe with an EPA-approved program successfully transitions from the use of PCS to the use of the ICIS-NPDES system, the Permit Compliance System (PCS) will remain the database of record. Once a successful transition to ICIS-NPDES takes place, ICIS-NPDES will be the database of record. Minor data should be entered into PCS or ICIS-NPDES for regional, state, and tribal activities where activities at minor facilities (e.g., inspections) have been traded for those at major facilities.

Since FY 2007, regions and headquarters offices will be expected to enter information into ICIS or a comparable data system regarding civil judicial, non-CERCLA consent decrees to demonstrate that EPA is effectively monitoring compliance with the terms of these decrees. This requirement applies only to consent decrees entered by a court after October 1, 2006. This action is in response to a 2001 Inspector General Report that encourages enhancement of efforts by the Agency to monitor compliance with enforcement instruments.



**SECTION IV: NATIONAL PROGRAM PRIORITY AND CORE REQUIREMENTS FOR ACHIEVING ENVIRONMENTAL PROTECTION THROUGH IMPROVED COMPLIANCE (Objective 5.1)**

**I. Requirements: Address Environmental Problems from Air Pollution (Sub-objective 5.1.1)**

OECA addresses problems from air pollution through two national priorities, the Air Toxics Maximum Achievable Control Technology (MACT) and the New Source Review/Prevention of Significant Deterioration (NSR/PSD). Air pollution environmental problems are also addressed through the following Core Programs; New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Maximum Achievable Control Technology (MACT), New Source Review/Prevention of Significant Deterioration (NSR/PSD), Title V Operating Permits, Stratospheric Ozone Protection, and Section 112(r) Risk Management Plans (RMPs).

**A. Clean Air Act National Priorities**

*1. National Priority: Air Toxics - Maximum Achievable Control Technology (MACT)*

Since FY 2005, the focus of the Air Toxics Enforcement Priority has been on compliance monitoring and enforcement. Addressing significant noncompliance and achieving hazardous air pollutant (HAP) emission reductions across the Maximum Achievable Control Technology (MACT) program is the overall goal of the priority. EPA identified national problem areas in the MACT program for the FY 2008-2010 planning cycle with widespread noncompliance with standards, a broad geographic scope, and where a distinct federal role based on EPA and state experience is appropriate. The three national problem areas selected are LDAR, industrial flares, and surface coating.

*2. National Priority: New Source Review/Prevention of Significant Deterioration (NSR/PSD)*

New Source Review (NSR) requirements in the CAA ensure that the construction of new sources or modification of existing air pollution sources do not jeopardize attainment of National Ambient Air Quality Standards (NAAQS) in non-attainment areas. Prevention of Significant Deterioration (PSD) requirements ensure that the influx of new air pollution sources do not degrade areas in compliance with the NAAQS. The NSR and PSD programs directly control emissions of criteria air pollutants. Non-compliance results in inadequate control of emissions, thereby contributing thousands of unaccounted tons of pollution each year, particularly of nitrogen oxide (NO<sub>x</sub>), volatile organic compounds (VOCs), sulfur dioxide (SO<sub>2</sub>) and particulate matter (PM<sub>10</sub>). These emissions worsen problems in non-attainment areas and threaten to drive attainment areas into non-attainment. Investigations conducted by EPA at coal-fired utilities, and glass, cement and acid manufacturers reveal that many facilities fail to obtain permits or install necessary controls for modifications subject to NSR or PSD.

## **B. Clean Air Act Core Programs**<sup>1</sup>

For the core CAA programs of New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Maximum Achievable Control Technology (MACT), New Source Review/Prevention of Significant Deterioration (NSR/PSD), Title V Operating Permits, Stratospheric Ozone Protection, and Section 112(r) Risk Management Plans (RMPs), the regions should continue to maintain a minimum level of activity consistent with the resources available for implementing the program and Agency policies, monitoring the level and quality of effort by the delegated agencies, and participating in region-specific initiatives that may require greater EPA involvement. In designing these programs, the regions should take into consideration all aspects of the program (e.g., compliance monitoring, applicability determinations, compliance assistance, incentives, enforcement, oversight), and focus on those activities that will yield the greatest environmental benefit and are not duplicative of efforts by delegated agencies. Regions should conduct the State Review Framework (SRF) in each of their states and territories by the end of FY2012 to ensure consistency across state programs and continuous improvement in program performance. The Regions should integrate the SRF and Compliance Monitoring Strategy (CMS) reviews to maximize efficiencies and avoid any duplication of effort. However, Regions can conduct a separate CMS evaluation as they deem appropriate. Regions should use the SRF process to assess implementation of national policies, obtain sufficient information on critical components of a compliance monitoring program, and ensure consistency with delegation agreements. This information will assist in determining program strengths and areas of potential vulnerability which may adversely affect program performance. For example, an integrated SRF/CMS review should include an evaluation of resources and impact on compliance monitoring, the availability of adequate inspector training and whether an appropriate mix of compliance monitoring techniques is being used. Regions should work with state and local agencies to address concerns raised during SRF reviews or independent CMS evaluations which they may have initiated.

### *1. NSPS/NESHAP/MACT PROGRAMS*

Compliance evaluations (Full Compliance Evaluations or Partial Compliance Evaluations) should be conducted at Title V major sources and synthetic minor sources that emit or have the potential to emit emissions at or above 80% of the Title V major source threshold (80% synthetic minors) consistent with the CMS, and the biennial plans developed by the delegated agencies. Emphasis should be placed on ensuring that implementing or delegated agencies provide and maintain an accurate universe of sources subject to the policy; develop facility-specific CMS plans; maintain records of compliance monitoring activities; and report all Minimum Data Requirements (MDRs) in a timely manner consistent with Agency policies, AFS Business Rules Compendium and the AFS Information Collection Request, "Source Compliance and State Action Reporting" (AFS-ICR). Once evaluations are completed, and a compliance determination made, all evaluations should be reported into the national database of record, AFS, within 60 days per the 2008 AFS ICR. The evaluations conducted by either the regions or delegated agencies and the resulting compliance

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<sup>1</sup> AED management comments have yet to be incorporated into this draft document.

determinations should not be held until the end of the fiscal year and input into the data system at one time. Regions should encourage those states and tribes with program approval, which include a step in the evaluation process to ensure the evaluation is completed before reporting the information into AFS, to initiate this step shortly after the evaluation is completed. Such action will assist in reporting on a timely basis in accordance with the AFS ICR. States and tribes should not wait to complete and report the evaluation until the end of the fiscal year.

For the core CAA program, regions should continue any on-going investigations, and initiate new ones as appropriate. These activities should be reported in AFS. This is a minimum data requirement in accordance with the AFS ICR. Activities reported as investigations should meet the definition of an investigation as provided in CMS. Additional guidance concerning the definition of an investigation is provided in the following: “MOA Guidance (Air Program) – Clarification and National Performance Measures Strategy (NPMS) Pilot” from Eric Schaeffer and Elaine Stanley to MOA Coordinators, Enforcement Coordinators, and RS&T Coordinators (October 26, 1998). See also, “Implementing the National Performance Measures Strategy – Second Phase (Attachment J)” from Steven A. Herman to Regional Administrators, Deputy Regional Administrators, and Regional Enforcement Division Directors and Coordinators (December 23, 1999). Please note that investigations for the PSD/NSR and Air Toxics Priorities are reported separately.

During the FY2010 time frame, continued emphasis should be placed on implementing the National Stack Testing Guidance. The guidance is a response to the OIG which criticized the Agency for not issuing national guidance on stack testing, or providing sufficient oversight of state and local stack testing programs. The OIG concluded that this lack of guidance and oversight had an adverse effect on the use of stack testing as a tool in determining compliance. All stack tests and the results should be reported in AFS.

Since issuing the Stack Testing Guidance on September 30, 2005, amendments were made to the General Provisions which allow source owners or operators to petition for an extension to the test deadlines as a result of a force majeure event. Such revisions were also extended to the Consolidated Federal Air Rule. Therefore, the guidance is scheduled to be updated in FY2009 to take into account these revisions as well as other minor clarifications based on feedback the Agency has received since the 2005 issuance. Regions should ensure that delegated agencies are familiar with the Stack Testing Guidance, and implement their programs consistent with the guidance.

### ***Performance Expectations***

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

and 20% of the universe for 80% synthetic minor sources per year. This default applies only to the state projections. However, this default may vary from state-to-state depending on negotiations between regions and states under the CMS.

**Commitment CAA 01:** Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by the regions;  
**Commitment CAA 01.s:** Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by individual states;  
**Commitment CAA 02:** Number of Full Compliance Evaluations to be conducted at 80% synthetic minors, and other sources (as appropriate) by regions;  
**Commitment CAA 02.s:** Number of Full Compliance Evaluations to be conducted at 80% synthetic minors, and other sources (as appropriate) by individual states;  
**Commitment CAA 03:** Number of Partial Compliance Evaluations (PCEs) to be conducted by the regions. This is a minimum data requirement;  
**Commitment CAA 03.s:** Number of PCEs to be conducted by individual states pursuant to CMS negotiations (could be the result of redirecting resources from FCEs to PCEs). This is a minimum data requirement.

CMS provides flexibility to the state/local agencies and tribes to negotiate alternative frequencies with the Regions. If a state/local agency or tribe chooses to utilize this existing flexibility, the Regions should evaluate the alternative plan and, prior to approving the alternative plan, provide OC/Compliance Assessment & Media Programs Division information concerning how compliance monitoring air resources are going to be redirected and the rationale for doing so. In evaluating alternative frequency requests, the Regions should take into consideration the impact of the current extraordinary economic crisis on the resources available to the delegated agency to implement the program.

**Commitment CAA05:** Number of investigations to be initiated in FY2010 for the core CAA program. Investigation projections should be provided by air program (e.g., MACT, NSPS). Note: investigations for PSD/NSR and Air Toxics Priorities are not part of this ACS commitment and are reported separately in different commitments.

The regions should enter both initiated and completed investigations into AFS (these are minimum data requirements), and identify the targeted air program(s). OECA uses this information to evaluate the overall health of the stationary source compliance monitoring program by comparing the number of FCEs, PCEs, and investigations. The region must provide a written explanation if none of these activities will be projected by the region for the year or if the region projects a reduced amount of activity in any one area (fewer FCEs, PCEs, or investigations). This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

Regions must ensure delegated agencies implement programs in accordance with CMS and monitor the level and quality of their effort. These activities are critical components of the core program. In support of the core program, it also is imperative that the compliance evaluations and results of those evaluations by the regions, delegated states/locals, and tribes

be timely and accurately reported. Therefore, the following activities are to be achieved. OECA will continue to collect and analyze information on these activities from either AFS, ICIS, or through SRF reviews. The regions should be prepared to discuss any concerns or questions arising from the collection and analysis of the data.

- Regions should negotiate facility-specific CMS plans with 100% of delegated agencies, periodically evaluate progress, and work with delegated agencies to revise the plans as necessary. Regions are to discuss with OECA alternative CMS plans proposed by delegated agencies prior to regional approval.
- Regions should utilize and encourage delegated agencies to use stack tests as a means of determining compliance. Regions, delegated states/locals, and tribes should report 100% of the stack tests and the results (pass/fail) in AFS when a compliance determination has been made in accordance with the AFS ICR.
- Regions should report 100% of the compliance results of all FCEs and PCEs into AFS within 60 days per the 2005 AFS ICR, and if feasible, in the next regularly scheduled update of AFS after an evaluation is completed and a compliance determination is made.
- Regions should ensure that 100% of the delegated agencies report the compliance results of all FCEs and negotiated PCEs into AFS within 60 days per the 2005 AFS ICR, after a compliance determination is made.

## 2. *Title V Operating Permits Program*

Regions should continue to review Title V permits consistent with guidance issued by the Air Enforcement Division and should ensure that the state/local agencies and tribes are reviewing the permits consistent with the CMS. In addition, they are responsible for ensuring that all permit program Minimum Data Requirements (MDRs) are entered into AFS in a timely manner.

### ***Performance Expectations***

Regions should ensure delegated agencies review Title V permits consistent with CMS and report MDRs into AFS in a complete and timely manner. Regions should also ensure that Title V permits do not shield sources subject to a pending or current CAA enforcement action or investigation, and that draft Title V permits include appropriate placeholder language for the applicable requirements at any affected units. Regions should ensure that consent decree requirements, including schedules of compliance, where required, are incorporated into underlying federally enforceable non-Title V permits and Title V permits. OECA will collect information and discuss these activities with regional air managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

## 3. *Stratospheric Ozone Protection*

Consistent with CMS, all regional FCE's at Title V major sources and 80% synthetic minors should include an evaluation of compliance with regulations promulgated to protect the stratospheric ozone layer if such regulations apply. When chlorofluorocarbon CFCs or other

ozone depleting substances (ODS) are known or suspected to be present at a facility of concern, available regional resources also may be used to conduct PCEs at these facilities. The regions are reminded that this program is not delegable to states, tribal, or local governments. Nevertheless, some states, tribal, or local governments may have promulgated similar requirements, and thus should be evaluating compliance with their respective requirements.

### ***Performance Expectations***

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

#### ***4. Section 112(r) Chemical Accident Prevention Provisions and General Duty Clause)***

Although section CAA section 112(r) is a Clean Air Act authority, responsibility for compliance and enforcement varies from region to region, and may not reside with the regional division responsible for the air compliance and enforcement program. Regions currently focus enforcement and compliance efforts on ensuring that facilities' risk management programs are adequate and meet the regulatory requirements. Headquarters will continue to provide support in this area. In light of continuing concerns regarding public safety, and in response to a recent evaluation conducted by the Inspector General, headquarters has developed criteria for determining which facilities pose a greater risk to human health and the environment. Regions should consider the following factors in focusing their compliance monitoring and enforcement efforts. In some cases a Region may wish to add to or modify these criteria in order to address its individual priorities and concerns:

- Facilities whose reported RMP worst-case scenario population exceeds 500,000 people
- Facilities holding any RMP-regulated substance on site in an amount more than 10,000 times the RMP threshold quantity for the substance;
- Facilities whose reported RMP worst-case scenario endpoint distance equals or exceeds 25 miles
- Any RMP facility with a hazard index greater than or equal to 25
- Facilities that have had one or more significant accidental releases within the previous five years
- Other facilities where information possessed by the Regional office indicates that the facility may be high-risk

### ***Performance Expectations***

Regions should perform inspections at 5% of the total number of regulated facilities in the region during FY 2010. Section 68.220 audits conducted do not count towards the 5% inspection target. Ten percent of the inspections should be conducted at high-risk facilities as described above. Inspections at high-risk facilities should also include an evaluation of

compliance with applicable EPCRA and CERCLA requirements. If the program is delegated to a state, tribe or local agency, the regions should work closely with the delegated agency to avoid duplication of effort. OECA will collect information and discuss these activities with regional managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

**Commitment CAA11:** Conduct inspections at 5% of the total number of facilities in the region required to submit RMPs. Of these inspections, 10% must be conducted at high-risk facilities. These inspections at high-risk facilities must also include an evaluation of compliance with applicable EPCRA and CERCLA requirements.

### ***Enforcement***

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

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

Critical components of the core program include the regions: (1) ensuring that delegated state/local agencies and tribes implement a compliance monitoring program and thereafter take appropriate enforcement action consistent with Agency policy (i.e., CMS, HPV); (2) conducting compliance evaluations (FCEs/PCEs) and investigations as warranted; and (3) taking all necessary and appropriate enforcement action. In support of the core program, it also is imperative that enforcement actions by the regions, delegated states/locals, and tribes be timely and accurately reported. Therefore, the following activities are to be achieved: (1) OECA will continue to collect and analyze information on these activities from either AFS, ICIS, or through SRF reviews and (2) the regions should be prepared to discuss any concerns or questions arising from the collection and analysis of the data.

- Evaluate and bring to closure 100% of any self-disclosures received by the region;
- Settle or litigate cases issued in years prior to FY2010 and ensure investigation and issuance of appropriate action for any open tips, complaints, or referrals received by EPA;
- Exercise 1997 clarified penalty authority against federal agencies for CAA

- violations in appropriate circumstances;
- Implement HPV policy as required, including “frequent (at least monthly)” discussions with delegated agencies to ensure their implementation consistent with the policy.
  - Exercise authority in accordance with the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Amendments to the CAA Civil Penalty Policy to implement the 2008 Penalty Inflation Rule.
  - Report 100% of MDRs accurately and in a timely manner in AFS consistent with Agency policy (i.e., CMS, HPV) and the AFS ICR and ensure that delegated agencies do the same.

### **Data Quality and Reporting**

Data reporting is an integral part of the CAA compliance and enforcement program; therefore, it is essential that regions and delegated agencies enter complete and accurate information into the national database in a timely manner. Complete, accurate, and timely data is necessary for EPA, delegated agencies, and the public to evaluate programs and institute corrections. For information on the reporting requirements for the CAA program, review the AFS ICR, the AFS Business Rules and the CMS/HPV policies. A complete list of the minimum data requirements is provided at the following location: <http://www.epa.gov/Compliance/resources/publications/data/systems/air/mdrshort.pdf>. If it is projected that a region or any delegated agency will not provide complete, accurate, and timely data consistent with the AFS ICR and Agency policy, the region should provide a written explanation.

Once evaluations are completed and a compliance determination made, all evaluations should be reported into AFS within 60 days per the AFS ICR, as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The evaluations conducted by either the regions or delegated agencies and the resulting compliance determinations should not be held until the end of the fiscal year and input into the data system at one time. Regions should encourage those states and tribes with program approval, which include a step in the evaluation process to ensure the evaluation is completed before reporting the information into AFS, to initiate this step shortly after the evaluation is completed. Such action will assist in reporting on a timely basis in accordance with the AFS ICR. States and tribes should not wait to complete and report the evaluation until the end of the fiscal year.

Regions should work with delegated agencies to ensure that agencies provide and maintain an accurate universe of sources subject to the CMS policy; develop facility-specific CMS plans; maintain records of compliance monitoring and enforcement activities; and report all MDRs in a timely manner consistent with Agency policies, the AFS Business Rules Compendium, and the AFS ICR. This is critical since the structure of the air program is different than other media programs in that the type and timing of compliance and enforcement data that must be reported into the national database are not specified by statute or regulations, but through Agency policy and the AFS ICR. Agreements with delegated agencies to provide complete, accurate, and timely data should be incorporated in documents such as MOUs, SEAs, PPAs, or Section 105 grant agreements.



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

**Commitment CAA 16:** Regions should ensure that delegated agencies have written agreements to provide complete, accurate, and timely data consistent with the Agency Policies, and the AFS ICR; identify the agreement; and provide copies of the relevant language if they have not already provided the relevant text or it has changed.

**Commitment CAA 17:** Regions and delegated agencies should enter all MDRs in AFS consistent with the Agency policies and the AFS ICR. If a delegated agency does not agree to enter all MDRs, the region is responsible for ensuring that the data is entered into AFS in a timely manner. If the region is responsible for entering data for a delegated agency or tribe, the region should identify the delegated agency or tribe.

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

### ***Program Oversight***

Regions should review state CAA stationary sources' compliance and enforcement programs pursuant to the State Review Framework guidance for Round 2 which provides instructions on conducting an integrated SRF/CMS review. Consistent with the SRF CAA policies (i.e., CMS, HPV Policy, Stack Testing Guidance, Penalty Policy, AFS ICR), regions should assess the performance of compliance monitoring programs and enforcement activities against the negotiated and agreed upon work plans to ensure that commitments are met. The SRF reviews should assess trends; recognize successes as well as document areas for improvement; and provide recommendations for improvement. The SRF reviews should also include reviews of the SRF data metrics, file reviews, conference calls, the Watch list, workplan reviews, oversight inspections, and in-person management and staff interviews. Results should be documented in the SRF report. For further guidance in this area, review the CAA Policies and SRF Guidance (i.e., SRF Final Report Guidelines, CAA Data and File Review Metrics, CAA Data and File Review Plain Language Guides). SRF documentation is available at the following location: [www.epa-otis.gov/otis/stateframework.html](http://www.epa-otis.gov/otis/stateframework.html). Also, see the sections on EPA/State relations and core program activities. Although Regions are not required to conduct separate in-depth CMS evaluations, they may deem it necessary to address regional priorities identified state-specific concerns.

## **II. Requirements: Address Environmental Problems from Water Pollution (Sub-objective 5.1.2)**

OECA addresses problems from water pollution through wet weather national priorities. Those priorities are combined sewer overflows (CSOs); sanitary sewer overflows (SSOs), concentrated animal feeding operations (CAFO), and stormwater run off. Clean Water Act (CWA) environmental problems are also addressed through the following core programs;

National Pollutant Discharge Elimination System (NPDES) Program, Pretreatment Program, Biosolids/ sludge program; CWA Section 404 (Wetlands) Program, and CWA Section 311 (Spill Prevention Control and Countermeasures (SPCC)) Program. In addition, the Safe Drinking Water (SDWA) programs of Public Water System Supervision (PWSS) Program and the Underground Injection Control (UIC) Program also support OECA's work to identify and eliminate water pollution problems.

### **A. Clean Water Act National Priorities**

Discharges from wet weather events are the leading causes of water quality impairment as documented in Clean Water Act (CWA) Section 305(b) reports and represent significant threats to public health and the environment. The discharges come from CSOs, SSOs, CAFO, and stormwater run off. EPA's wet weather priority strategies focus on key environmental risks and noncompliance problems in each of these areas.

#### *1. National Priority: Stormwater*

Storm water discharges continues to be a national enforcement and compliance priority. Storm water runoff from urban areas, including discharges from municipal storm sewers, industrial facilities and construction sites can have significant adverse impacts on water quality. These water quality impacts can be defined by two key problems - storm water quality and storm water quantity. EPA's *National Water Quality Inventory: 2000 Report*, prepared under Section 305(b) of the Clean Water Act, states that urban storm water runoff and discharges from storm sewers are a primary cause of impaired water quality in the United States. Runoff from rain and melting snow is responsible for beach closings, swimming and fishing advisories, and habitat degradation. As storm water flows through urbanized areas, or over construction or industrial sites, it can pick up a variety of pollutants that can harm the environment and public health, including bacteria, sediment, debris, pesticides, petroleum products, chemicals, solvents, asphalts and acids. Without on-site controls, this storm water generally flows untreated directly to the nearest waterway. The large number of municipal separate storm water sewer systems or Municipal Separate Storm Sewer Systems (MS4s) (about 8,000), construction sites (over 240,000 new sites per year), and industrial sites (over 100,000), and the diversity of these activities, make this a large and complex problem. Changes in land use associated with development and urban sprawl affect the volume and rate of storm water discharged to receiving streams. The volume and rate of storm water runoff will continue to grow as development replaces porous surfaces with impervious blacktop, rooftops, compacted soil, and concrete. In urban areas, it is not uncommon for impervious surfaces to account for 45% or more of the land cover. The increasing volumes and rates of storm water runoff can affect the equilibrium that exists in natural, undisturbed waters, resulting in such impacts as increased stream bank erosion, which in turn causes increased silt in waterways and habitat destruction.

#### *2. National Priority: Combined Sewer Overflows*

CSOs, composed of both polluted stormwater and untreated human and industrial waste from combined sewer and stormwater systems, are a significant cause of water quality impairment and often affect parks, beaches, backyards, city streets and playgrounds. Typical

pollutants found in CSOs include total suspended solids (TSS), metals, bacteria, viruses, nutrients, oxygen-demanding compounds and other pollutants washed from city streets and parking lots. CSOs can be a major cause of beach and shellfish bed closures and advisories, as well as fish kills, and can contribute to pathogens in quantities that exceed water quality standards.

Combined sewer systems (CSSs) are designed to collect stormwater runoff, domestic sewage, and industrial wastewater in the same pipe and transport it to a sewage treatment plant, where it is treated and then discharged to a water body. During periods of rainfall or snowmelt, however, the wastewater volume in a combined sewer system can exceed the capacity of the sewer system or treatment plant. When the capacity of the system or the treatment plant is exceeded, the excess wastewater overflows directly into nearby streams, rivers, or other water bodies, typically violating water quality standards. CSOs are primarily caused by wet weather events, when the combined volume of wastewater and stormwater entering the system exceeds the capacity of the CSS or treatment plant. Overflow frequency and volume varies from system to system and from outfall to outfall within a single CSS. Discharges from a CSS during dry weather, referred to as dry weather overflows, are prohibited under the NPDES program. Combined sewer systems can also back up into buildings, including private residences. Combined with other municipal sewage discharges, they contribute to 15 percent of impaired rivers and streams, 6 percent of impaired lakes, and 33 percent of impaired bays and estuaries.

### *3. National Priority: Sanitary Sewer Overflows*

SSOs pose a substantial risk to public health and the environment – the raw sewage in SSOs contains a host of pollutants (bacteria, viruses and other pathogens, oil, pesticides, debris) and can cause serious water quality problems. There is also a high potential for human exposure to contamination from SSOs due to their location in communities and the frequency of occurrence (often SSOs occur in parks, city streets, and backyards, or backup into homes and commercial establishments).

Properly designed, operated, and maintained sanitary sewer systems are meant to collect and transport all of the sewage that flows into them to publicly owned treatment works (POTW) for treatment. However, releases of raw sewage from municipal sanitary sewers during overflows during wet weather events may be caused by poor sewer collection system management, and often pose a substantial risk to public health and the environment.

The public can be exposed to raw sewage from SSOs through street flooding, recreational contact such as swimming and fishing, drinking contaminated water and collection system back-ups into homes. It is important to note that the threat to public health and the environment posed by SSOs is not necessarily limited to large volume or extended-duration overflows. Some of the greatest threats from SSOs stem from viruses and pathogens which can present a public health threat even in small volume, intermittent overflows. SSOs are of special concern to public health because they expose citizens to bacteria, viruses, intestinal parasites, and other microorganisms that can cause serious illness such as cholera, dysentery, hepatitis, *cryptosporidiosis*, and *giardiasis*. Sensitive populations - - children, the elderly and those with

weakened immune systems - - can be at a higher risk of illness from exposure to sewage from SSOs.

#### *4. National Priority: Concentrated Animal Feeding Operations*

Discharge of nitrogen, phosphorous and fecal coliform bacteria from Concentrated Animal Feeding Operations to water bodies can occur through poor maintenance of waste lagoons, inadequate design, construction, operation, or storage and containment of animal waste, excessive and improper land application of manure, and excessive rainfall resulting in spills and leaks from manure management areas.

Agriculture, including CAFOs, continues to be a leading source of water quality impairment. Consolidation trends in the livestock industry have resulted in larger-sized operations that generate a large volume of animal manure. Larger size operations also result in less available land on which to spread the manure. The U.S. Department of Agriculture (USDA) estimates that operations that confine livestock and poultry animals generate about 500 million tons of manure annually – three times the amount of EPA’s estimate of 150 million tons of human sanitary waste produced annually in the U.S. Pollutants commonly associated with manure include nutrients (mainly nitrogen and phosphorus), organic matter, solids, and pathogens. USDA data show that the amount of nutrients and the amount of excess nutrients, produced by confined animal operations rose about 20% from 1982 to 1997. Pollutants from animal waste can enter the environment from a number of pathways, including surface runoff and erosion, overflows from lagoons, spills and other dry-weather discharges, and leaching into soil and ground water. They can be released from a CAFO’s animal confinement area, treatment and storage lagoons, manure stockpiles, and from cropland where manure is often applied to the land as fertilizer.

Adverse environmental and human health impacts associated with pollutants in animal manure include: eutrophication or nutrient over-enrichment of surface waters, fish kills, reductions in dissolved oxygen available for aquatic life, increase in suspended solids resulting in an increase in turbidity of surface waters and inhibition of the functioning of aquatic plants and animals, nitrate contamination of drinking water, and transmission of pathogens associated with food and waterborne diseases in humans. An EPA analysis (conducted in support of its 2001 proposed CAFO rule) showed that between 1981 and 1999, 19 states reported 4 million fish killed from both runoff and spills at CAFOs.

### **B. Clean Water Act Core Programs**

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

- National Pollutant Discharge Elimination System (NPDES) Program (includes wet weather programs CAFOs, Stormwater, CSOs, SSOs)
- Pretreatment Program (include CWA section)
- Biosolids/Sludge Program (include CWA section)
- CWA Section 404 (Wetlands) Program

- CWA Section 311 (Oil Pollution Act, which includes spills, Spill Prevention Control and Countermeasures (SPCC)) Program, and, Facility Response Plans (FRP))

Core CWA programs implemented by regions, including direct implementation in Indian country, and by the states should:

- Follow guidance provided in existing national compliance and enforcement policy and guidance, e.g., the 1989 *National Enforcement Management System (EMS)* and the 2007 NPDES Compliance Monitoring Strategy (CMS);
- Consider all available data in implementing the compliance and enforcement activities described below;
- Maintain an effective inspection program in each of the five water program areas;
- Utilize assistance, incentives, monitoring, and enforcement tools in the priority and core areas;
- Focus attention on protection of priority water areas include watersheds, public drinking water intakes or designated protection areas, waters that could impact shellfish beds, waters with threatened or endangered species, waters designated as primary contact recreation, and waters located in areas with environmental justice concerns;
- Evaluate all violations, determine an appropriate response, and take timely and appropriate actions against facilities in significant noncompliance (SNC), especially those causing facilities to be on the Watch List according to the EMS;
- In addition, EPA regions should focus assistance, incentives, monitoring, and enforcement actions in the national priority areas, while maintaining a viable presence in all CWA programs.

### *1. NPDES Program*

***Development of State-specific strategies pursuant to the NPDES Compliance Monitoring Strategy*** [NOTE: The following discussion of the CMS planning process tracks the October 17, 2007 CMS memorandum and attachments from Granta Y. Nakayama to the Regional Administrators, et al.]

Full implementation of the *Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources (issued October 17, 2007)* (hereafter referred to as the Compliance Monitoring Strategy or the CMS) commenced at the beginning of FY 2009 on October 1, 2008. During FY 2009, regions and states were to jointly develop and agree on a compliance monitoring plan for each state for core program and wet weather program inspections, ensuring a reasonable inspection presence in each program area. State Plans are to include the various universe numbers for each program area, and the coverage commitment for each universe. Regional contributions to coverage within the state should be noted. Regions are to provide OC upon completion a copy of each state-specific compliance monitoring plan for FY 2010. OC will provide comments to regions, as necessary, on needed use of CMS flexibility, enhancements, or modifications to the state-specific plans. At end-of-year 2010, the regions are to submit a report for each state by each inspection category and subcategory contained in Attachments 1 and 2 of the CMS, that

details a combined EPA and state total number of inspections and percent coverage for each area. For the CAFO priority, States and Regions should conduct inspections, take enforcement actions and conduct outreach activities to prompt those CAFOs that do not have a permit, but need to be covered by a permit, to apply for one.

For FY 2010, CMS planning and agreements should build on the progress achieved in FY 2009, and should address any recommendations provided by OC on the earlier state-specific CMS plans. Regions and states should briefly document trade-offs among program areas covered by the CMS that are made utilizing the flexibility contained in the policy. This documentation is particularly important for trade-offs that are made in response to state budget reductions that occur as a result of state economic conditions. In anticipation of issuance of the FY 2011 national program guidance a year from now, Regions and states are alerted that OECA will be moving from the single NPDES compliance monitoring commitment focused on establishment of the state-specific CMS plans to development of a set of inspection related commitments that track the elements of the October 17, 2007 CMS policy memorandum. At this juncture, OECA anticipates that there will be approximately 8 commitments for FY 2011 that deal both with traditional core program areas (e.g., inspections at majors, traditional minors, pretreatment, biosolids) and wet weather program areas (e.g., CSO, SSO, storm water, and CAFOs). Specific measures for these commitments will be developed with a target finalization date of January 15, 2010.

Round 2 State Review Framework evaluations of Elements 4 and 5 that are conducted in FY 2010 should be based on the frequencies contained in the agreed upon state-specific CMS plans. In the absence of an agreed upon state plan, the inspection frequency goals contained in the national CMS policy should be used as the basis for the Element 4 and 5 performance analysis. In such instances, the evaluation should include assessment of performance relative to the CMS goals for majors, traditional non-majors, approved pretreatment programs, CSOs (if applicable), SSOs, at least one subcomponent of the storm water program (either industrial, Municipal Separate Storm Sewer Systems (MS4), or construction), and at least one of the subcomponents of the CAFO program as described in the CMS.

The suggested overall planning process to implement the program areas addressed in the CMS guidance is one that separately identifies core program inspection needs and wet weather program needs (Attachments 1 and 2 of the CMS Guidance) and then strikes an appropriate balance between the two by considering factors including: noncompliance trends, water quality considerations within individual states, and state and EPA resources. To support attainment of water quality goals, the inspection planning process should increasingly be influenced by information on nonattainment of water quality standards to which facilities may be contributing (pursuant to listings under CWA Sections 303(d) and 305(b)). These inspection planning expectations are intended to promote joint inspection planning and an opportunity to identify state-specific circumstances and encourage dialogue on the approaches the state expects to implement.

EPA regional NPDES programs should work closely with each of their states to plan for their core program and wet weather priority inspections, and to ensure a reasonable inspection presence in each program area.

### ***Reporting and Measurement***

State and regional compliance monitoring activities conducted pursuant to the goals in CMS and the state-specific plans should be reported into the appropriate national information system, either PCS or ICIS-NPDES, in accordance with documents which establish data requirements and reporting timeframes for those systems. If data systems are not able to support reporting at end-of-year FY 2010, the regions will have to submit manual reporting. Manual reporting instructions for the regions will be specified in greater detail in the multi-program fiscal year reporting guidance memorandum

**Commitment CWA07:** By December 31, 2009, provide one specific Compliance Monitoring Strategy (CMS) plan for each state in the region. The plan should provide universe information for the CMS categories; sub-categories covered by the CMS and combined EPA and state expected accomplishments for each category and subcategory. The plan should identify trade-offs made among the categories utilizing the flexibility designed into the CMS policy. At end of year provide for each state a numerical report on EPA and state inspection plan outputs, by category and subcategory.

### ***Oversight Inspections***

Regions should conduct a sufficient number of oversight inspections to ensure the integrity of each state or tribe with primacy compliance monitoring program. The definition of oversight inspections was defined on pp. 11-13 of this document. Oversight inspections are a principal means of evaluating both the quality of an inspection program and inspector training and can be conducted in two ways: 1) by accompanying state inspectors during inspections, or 2) by conducting a separate inspection at the same facility at a later date to verify the same findings. The regions have flexibility to determine the appropriate number of oversight inspections needed to ensure proper state inspection conduct and documentation. The documents also clarify that oversight inspections are not "joint" inspections. Joint inspections are defined as inspections where both EPA and a state/tribe conduct compliance inspection activities at the facility/site, but also include training of the state/tribe by the EPA inspector.

Generally EPA oversight inspections should be conducted in coordination with SRF reviews. Oversight inspections provide valuable insight into the quality of the state inspection program, and would assist in the SRF file review process. The CMS indicates that “[a] minimum of five (5) EPA oversight inspections should be conducted in each state where an SRF review is scheduled to take place in the subsequent fiscal year. These inspections may also include joint state/EPA inspections where a state has the lead role in the inspection.”

**Commitment CWA03:** Project by state the number of federal oversight inspections to be conducted. The regions must provide detailed explanations if no oversight inspections are projected in this area.

## ***Regional Enforcement***

The underlying tenet of the enforcement program is that each violation deserves some type of enforcement response. Guidance on the appropriate response to different types of violations is contained in the Enforcement Management System <http://www.epa.gov/compliance/resources/policies/civil/cwa/emscwa-jensen-rpt.pdf>. Regions are expected to evaluate all violations, determine an appropriate response per the EMS, and take that action. Regions should focus actions in the national priority areas while maintaining a presence in all water programs.

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

State, and where they exist, tribal SNC identification and enforcement responses are major components of the Watch List and the SRF. Regions should monitor state performance through these tools and the use of OTIS management reports.

## ***Program Oversight***

Regions should review state NPDES compliance monitoring programs pursuant to the SRF guidance. Consistent with the SRF, regions should assess the performance of compliance monitoring programs and enforcement activities against the negotiated and agreed upon work plans to ensure that commitments are met. SRF reviews should assess trends; recognize successes as well as document areas for improvement; and provide recommendations for improvement. SRF reviews are based on a review of SRF data metrics, file reviews, and activities such as conference calls, the Watch list, workplan reviews, oversight inspections, and in-person management and staff interviews. Results should be documented in the SRF report.

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 or ICIS-NPDES data and reviewing the DMRs themselves as necessary.) This activity does not apply to the SPCC 311 and Section 404 Wetlands Programs.

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

- number of SNCs *identified* (and percent of universe);
- number (and percent) addressed in a timely and appropriate manner; and
- number of Watchlist facilities per region.
- quality and timeliness of conducting SRF reviews and dealing with identified issues

### ***2. Section 404 (Wetlands)***

Regions should have a process for identifying, targeting, inspecting, and otherwise responding to illegal activities. Since only two states and no tribes are authorized to run 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., U.S. Army Corps of Engineers, Natural Resources Conservation Service (NRCS), Fish and Wildlife Service, etc.)

### *3. CWA Section 311 (Spills, Spill Prevention Control and Countermeasures (SPCC) and Facility Response Plan (FRP) Programs)*

CWA Section 311 provides statutory authority for inspections, administrative orders, other program implementation and enforcement to address noncompliance with statutory spill and notification requirements, as well as spill prevention and facility response planning regulations, often referred to as the SPCC and FRP programs. Responsibility for program implementation (including most of the compliance monitoring and compliance assistance responsibilities) resides with the Office of Solid Waste and Emergency Response/Office of Emergency Management at headquarters and, in a number of different regional divisions including: Emergency and Remedial Response; Superfund; Hazardous Waste Cleanup; Environmental Cleanup; Ecosystems Protection and Remediation; and Waste Management. These resources are also often in different regional offices from the enforcement resources who conduct investigations, enforcement targeting, record reviews and case development.

CWA Section 311 does not have a mechanism for states to implement the program. This is, therefore, primarily a federal effort. The regions must coordinate, as appropriate, with the Coast Guard and other federal agencies which have significant roles in addressing spills, and follow all related Memoranda of Agreement.

Compliance and enforcement efforts in CWA 311 should focus on ensuring that regulated sources have developed, maintained and implemented the required Spill Prevention Control and Countermeasures (SPCC) plans and/or Facility Response Plans (FRP) and other requirements in compliance with EPA spill prevention and facility response planning regulations. Typically, regions should check compliance monitoring at facilities subject to spill prevention and facility response planning SPCC or FRP requirements to ensure that plans are adequate, meet the regulatory requirements, and are implemented as shown by a commitment to resources and training. In light of continuing concerns regarding chemical safety, regions should also ensure that some FRP facilities are targeted for compliance monitoring and compliance assistance considering that these facilities have large quantities of oil and may have a close proximity to population centers and/or critical infrastructures (such as drinking water intakes).

Regions should review reporting practices to ensure that oil and hazardous substance spills are timely and accurately reported to the National Response Center (NRC) and should routinely review spill notification reports, inspection reports, and other available data to determine if routine noncompliance or the risk of spills from oil storage is being adequately addressed.

#### 4. Pretreatment Program

Publicly Operated Treatment Works (POTWs) collect waste water from residential homes, commercial buildings, and industrial facilities and transport it via a series of pipes, known as a collection system, to the treatment plant. The POTW removes harmful organisms and other contaminants from the sewage so it can be discharged safely into the receiving stream. Generally, POTWs are designed to treat domestic sewage only. However, a significant number of POTWs receive waste water from industrial (non-domestic) users (IUs). The General Pretreatment Regulations establish responsibilities for Federal, State, local government, industry and the public to implement the Pretreatment Standards to control pollutants from the IUs. These pollutants may pass through or interfere with (POTWs) treatment processes, or they may contaminate sewage sludge. Pretreatment inspections and IU inspections are used to determine if POTWs are meeting regulatory requirements.

#### 5. Biosolids/ sludge program

The Biosolids/ sludge program is designed to determine that POTWs are in compliance with the regulations for treating, storing, and disposal of biosolids/sludge. Biosolids/sludge inspections are the primary mechanism to determine whether facilities are in compliance with the sludge regulation requirements. The requirements apply to any facility engaged in a regulated sludge or disposal practice. The inspection evaluates the permittee's compliance with sludge monitoring, record keeping and reporting, treatment operations, and sampling and laboratory quality assurance. These inspections may be conducted in conjunction with other compliance inspections at major and minor POTWs such as compliance evaluations (CEIs). Biosolids/sludge inspections may also be conducted to respond to citizen complaints.

NOTE: It should also be noted that some of these regulatory programs may not be approved by EPA, and as a result they are not implemented at the state level. Examples include CWA Sections 311 and 404, and, in some states, the Pretreatment Program.

### **C. Safe Drinking Water Act (SDWA) Core Program**

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

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

- The Safe Drinking Water Information System Operational Database System (SDWIS/ODS) is the main database system used by EPA, states and tribes with primacy to track public drinking water systems.
- Based upon discussions with the regions a “Fixed Base” SNC/Exception List will be generated from the frozen July SDWIS database. The list will include PWSs of all sizes and types. Using this list the regions will commit to address or resolve with their states and tribes a specific number of systems between July 2009 and June 2010. The regions do not need to specify the names of PWSs that they plan to address.
- The regions, states, and tribes need to all address actions in SDWIS by June 30, 2010, so the numbers achieved will be available for the October End-of-Year results
- The expectation is that the regions will work primarily with the states and tribes with primacy to ensure that they are addressing SNC/Exceptions. The regions should not have to address all the SNC/Exceptions themselves.
- Headquarters will provide quarterly data for new SNCs, those about to become exceptions, and new exceptions until such a time as a standardized pull is developed for use in the modernized SDWIS/ODS data system. The regions can use the quarterly data to determine if recently identified SNCs are higher priorities than some SNCs listed on the Fixed Base List. When these high priority SNCs are addressed by a region or state, these count toward the regional commitment number for the Fixed Base List as a substitute for systems on the July Fixed Base list.
- Regions will report to headquarters at midyear and end of year on the number of PWSs addressed from the fixed base list and the number of PWSs addressed.
- OECA has worked with the Regions to develop a new Enforcement Response Policy (ERP) that will define significant non-compliers by a system-based approach versus the current rule-based approach. During the later part of FY09 EPA and the Association of State Drinking Water Administration (ASDWA) will pilot the new ERP by running the new approach concurrently with the old approach while issues are resolved. Depending upon the outcome of the FY09 pilot, OECA may implement the system-based approach in FY10, or continuing running the approaches concurrently to ensure resolution of issues.

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

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

Regions should target compliance assistance toward small drinking water systems (serving 3,300 or fewer users). Using the data contained in SDWIS/ODS to identify patterns

of noncompliance, regions can both target the small systems most likely to benefit from compliance assistance and assemble compliance assistance materials suited to their particular needs. Regions should coordinate with the drinking water program office and work with the states and tribes to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform required activities. Regions should focus compliance assistance resources on helping small systems and tribal systems comply with microbial and new rules.

We encourage the regions to use and market the Local Government Environmental Assistance Network (LGEAN) (<http://www.lgean.org>), and the National Drinking Water Clearinghouse (<http://www.nesc.wvu.edu/ndwc/>) as sources of compliance assistance information. Compliance assistance is also provided by an array of non-governmental organizations, including the National Rural Water Association (<http://www.nrwa.org/>) and the Rural Community Assistance Corporation (<http://www.rcac.org/>). In addition, the Indian Health Services offers assistance to drinking water systems in Indian country. We also encourage the regions to make available compliance information packages that can be distributed by sanitary survey inspectors.

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

Regions should measure outcomes of their assistance activities. The "measures" area of the compliance assistance homepage (<http://www.epa.gov/compliance/assistance/measures/index.html>) provides guidance documents, tools, and success stories regions can use to assess the effectiveness of their compliance assistance efforts. Regions should also encourage states and tribes to measure compliance assistance performance.

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

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

### ***Regional Enforcement***

Regions are to take timely and appropriate action to address all circumstances that present or have the potential to present, imminent and substantial endangerment to public

health, regardless of whether the contaminant is an acute or chronic contaminant. To ensure national consistency and promote establishment of strong precedent, regions are strongly encouraged to consult with OCE prior to issuance of an order to address any imminent and substantial endangerment to public health that may exist.

**Commitment SDWA02:** Primacy states, tribes and EPA will address or resolve Public Water Systems listed on a 'Fixed Base' SNC/Exceptions list.\*

\*It is recommended that high priority systems be substituted for lower priority systems on the fixed base list. The regions should provide a break out number by state and by tribe in the comment field. Later identified high priority systems can be substituted to meet the commitment to address/resolve systems.

### ***Data Quality and Reporting***

Efforts to assess the quality of the data in the SDWIS/FED indicate that the data in the system are highly accurate, but many violations are not in the system. While the largest burden for improving the quality of data in SDWIS/FED falls on the states and tribes with primacy (and regions for most of Indian country and where states lack primacy), it is important that EPA also do its best to ensure data are reported accurately and completely.

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

- Number of public water system SNCs that return to compliance as a result of an on-site compliance assistance visit and which were not the subject of a reported enforcement follow up activity.
- Number of small and tribal public water systems in violation that receive direct compliance assistance, subsequently return to compliance, and are not the subject of a reported enforcement follow up activity.
- Number of public water systems that receive compliance assistance.

Regions, states, and tribes with primacy are expected to ensure that all required data is entered or uploaded into SDWIS/ODS, including federal facilities as applicable. Regions with direct implementation programs, including those with authority for implementing the drinking water program in Indian country, are expected to enter the data. If regions directly implement any of the new drinking water regulations, they must ensure that the required data is in SDWIS/ODS. Regions should review reports as appropriate to ensure changes to data are successfully accepted in SDWIS/ODS. All PWSS federal enforcement cases should be entered into both ICIS and SDWIS/ODS. Regions should report sanitary surveys into ICIS as compliance assistance activities.

All federal inspections, including those that previously reported manually, must be entered into ICIS in FY 2009. Separate guidance on sanitary surveys is in a December 9, 2005 memorandum from James Edward and Stephen Heare directing the regions to report sanitary surveys into ICIS as compliance assistance activities. A follow-up July 30, 2007 memorandum from James Edward and Stephen Heare detailed the findings of an examination of the Safe Drinking Water Act compliance assistance (including sanitary surveys) information the Regions reported into ICIS for FY 2006. The memorandum also recommends simple procedural changes with respect to sanitary surveys, as they will allow the Regions to collect and report outcomes with little or no additional effort. OECA will develop an annual report on the outcomes of the reported sanitary surveys based upon the information that the Regions entered into ICIS in FY2010.

### ***Program Oversight***

To ensure adequate program oversight, regions should review data in the SDWIS/ODS and review other information on compliance available to the region. In evaluating regional performance, OECA will look at:

- the number of SNCs identified in the fixed based SNC/Exception list
- the number of SNCs addressed from fixed base SNC/Exception list
- the number of SNCs addressed from quarterly data which were identified as higher priority

### **2 Underground Injection Control (UIC) Program**

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

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 available information which suggests the existence of Class V well or wells. Based on review of this information, appropriate inspections or enforcement actions should be targeted.

### **III. Requirements: Address Environmental Problems from Waste, Toxics, and Pesticides Pollution (Sub-objective 5.1.3)**

OECA addresses environmental problems from waste, toxics, and pesticides through two national priorities and under three different statutes. The national priority work that support this requirement are Financial Responsibility and Mineral Processing. Core programs under the Resource Conservation and Recovery Act (RCRA) include Hazardous Waste Subtitle C Program, the Underground Storage Tank Subtitle I program and Imminent and Substantial Endangerment. The Toxic Substances Control Act (TSCA) program addresses core

TSCA, PCBs, TSCA Asbestos and Lead-based paint program. The Federal Insecticide, Fungicide and Rodenticide Act program is concerned with pesticides.

## **A. Mineral Processing and Financial Assurance Priorities**

### *1. National Priority: Financial Responsibility*

Financial responsibility protects public health and the environment by promoting the proper and safe handling of hazardous materials and protecting against a liable party defaulting on facility closure or clean up obligations. Consistent with EPA's mandate to protect human health and the environment and ensure compliance with the law, as well as the Agency's long standing "polluter pays" principle, an enforcement strategy for obtaining full compliance with financial responsibility requirements prevents improper handling of hazardous materials and the potential shifting of the cleanup costs from the responsible parties to state and federal taxpayers.

OECA is now entering the second phase of the financial assurance priority. OECA will continue to provide training and assist in conducting preliminary financial assessments (PFAs), but the larger emphasis will be getting facilities into compliance or on the path to compliance. This includes EPA identifying and developing financial assurance enforcement cases and working with our co-regulators in the States to bring financial assurance cases.

### *2. National Priority: Mineral Processing*

The mishandling of mineral processing wastes causes significant environmental damage and results in costly cleanups. These highly acidic wastes cause fish kills and elevate levels of arsenic and cadmium in residential wells. Evidence gathered in recent inspections indicates that mineral processing facilities are failing to obtain the necessary permits and adequately manage waste.

The mineral processing sector generates more wastes that are corrosive or contain toxic metals than any other industrial sector. Over the past decade, many of the facilities that manage these wastes create groundwater, surface water, and soil contamination due either to noncompliance with state or federal environmental requirements or other legally permissible waste management practices. In addition, the Agency has many mineral processing and mining sites on the Superfund National Priorities List (NPL) and, along with states, undertakes expensive cleanups using other authorities. Environmental damages are especially prevalent in mineral processing and mining operations and often include severe impacts on water supplies and wildlife. Damages tend to be more pronounced at large scale operations, however, some small facilities also cause significant environmental damage. Many facilities are in close proximity to populations, and the health risk to people living near these facilities is of significant concern to EPA.

## **B. Resource Conservation and Recovery Act (RCRA) Core Program**

The RCRA program includes the Hazardous Waste Subtitle C and Underground Storage Tank Subtitle I programs.

### *1. Hazardous Waste Subtitle C Program*

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

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities include all of Indian country and complement the activities of tribal environmental programs under tribal laws. State activities are to be monitored through various mechanisms including the implementation of the SRF, the Watch List, and the annual commitment system grant reviews. Regions should refer to the federal facilities Section I of this guidance for information on how to include federal facilities in core program activities where applicable.

#### Core Program Elements

- Inspections of treatment, storage and disposal facilities, as required under RCRA 3007(e), and state and local government operated treatment, storage, and disposal facilities, as required under RCRA 3007(d), should verify compliance every 2 years with at least the following requirements established as standards per RCRA 3004(a):
  - maintaining records of and the manner in which all hazardous waste which is treated, stored, or disposed of;
  - satisfactory reporting and compliance of the manifest system;
  - treatment, storage, or disposal of all waste received by the facility in accordance with the law;
  - establishing contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any hazardous waste;
  - training for personnel; and
  - financial responsibility.
  
- Inspections of generators should verify compliance with at least the following requirements established as standards per RCRA 3002(a):
  - proper characterization of the hazardous waste;
  - provision of information on the general chemical composition of hazardous waste to persons transporting, treating, storing and disposing of such wastes;
  - record keeping on the management and disposition of waste;



- proper labeling and identification of waste for storage, transport, and disposal;
  - use of proper containers, tanks and drip pads for the hazardous waste;
  - use of the manifest system and all other means necessary to assure that hazardous waste is sent to the appropriate treatment, storage and disposal facility; and
  - submission of reports to the Administrator reporting the waste generated.
- Inspections of transports should verify compliance with at least the following requirements established as standards per RCRA 3003(a):
    - record keeping;
    - properly labeled waste;
    - use of the manifest system;
    - proper management of hazardous waste during transportation; and
    - hazardous waste delivered to treatment, storage, and disposal facilities that are permitted by law to take such waste.

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

### ***Monitoring and Regional Enforcement***

To ensure a level playing field and oversight of state compliance assurance and monitoring activities, regions should utilize the tools available, such as the SRF, OTIS management reports, and the Watch List to monitor state performance, and also maintain a federal presence in the hazardous waste core program, including full program implementation in Indian country

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

- never inspected LQG generators;
- facilities that are the subject of citizen complaints;
- non-notifier facilities believed to generate hazardous waste;
- persons that generate, transport, treat, store, or dispose of significant quantities of hazardous wastes, in particular those in proximity to population centers or environmentally sensitive areas; and
- repeat violators.

### ***Performance Expectations***

The states and regions should work together to determine the appropriate mix of federal and state compliance monitoring activities to meet hazardous waste core program activities. Regions should work with tribes to determine the appropriate range of compliance monitoring activities in Indian country. In making determinations, each region should examine the

compliance status of facilities within the region. For facilities that are multiple types (e.g. a facility that is a TSD, generator, and/or transporter), a CEI is deemed to be complete only when all aspects of that facility have been completed. Additionally, if a facility is a TSD as well as a generator and/or transporter, it is counted as a TSD for universe coverage.

### Combined State and Federal Core Activities

#### i. Statutory mandated inspections

- Treatment, storage and disposal facilities: Inspect at least once every two years each operating treatment, storage, and disposal facility, as required under RCRA §3007(e), i.e., 50% of TSDF universe annually. This is a coverage commitment so multiple inspections of the same facility count as only one inspection. For RCRA01 and RCRA01.s, commitment levels are based on the RCRAInfo operating universe for TSDFs. Pursuant to RCRA Section 3007(e), TSDFs must be “thoroughly” inspected (i.e., a compliance evaluation inspection for operating TSDs).

**Commitment RCRA01:** Project by state the number of TSDFs to be inspected by the region during the year. The regions must commit to inspecting at least 2 TSDFs in each state unless approval is obtained from headquarters to deviate from this requirement.

**Commitment RCRA01.s:** Project by state the number of TSDFs to be inspected by the state during the year.

Note: In addition to the CEIs expected for most of the TSDFs, groundwater monitoring evaluations (GMEs) should be conducted at any new or newly regulated land disposal facility, defined under §3004(k). Once it is determined that a groundwater monitoring system is adequately designed and installed, an operation and maintenance (OAM) inspection may become the appropriate ground water monitoring inspection. More frequent GMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate groundwater monitoring systems, significant changes to groundwater monitoring systems, and actual or suspected changes in local groundwater regimes. For TSDFs that are no longer in the operating universe but still have requirements to comply with, it is expected that the Regions/states will inspect (e.g., CEI, GME or OAM) those facilities every three years.

#### ii. EPA mandated inspections

- Annually inspect at least 20% of the large quantity generator (LQG) universe, so that the entire universe is inspected in five years unless approval to deviate from this requirement is approved as described below. The LQG universe is the total number of generators that reported in 2005 BRS (or if data in RCRAInfo is acceptable, the full enforcement universe for LQGs). This is meant to be a coverage commitment so multiple inspections of the same facility count as only one inspection. The regions are required to capture the outcomes of inspections using ICDS and any follow-up enforcement in ICIS and are strongly encouraged to require the states to report the outcomes of their

inspections and any follow-up enforcement actions in addition to reporting the number of inspections. These outcomes include approximate quantities of waste which were confirmed to being handled in accordance with the appropriate regulations; quantities of waste which were not being handled properly at the time of inspection but are now being handled properly because of complying actions taken by the regulated facilities; and updating the generator status of the regulated facilities as necessary.

**Commitment RCRA02:** Project by state the number of LQGs to be inspected by the region during the year. The regions must commit to inspecting at least 6 LQGs in each state unless approval is obtained from headquarters to deviate from this requirement (generally a reduced commitment is allowed where the generator universe in the state is small). These LQG inspections should be compliance evaluation inspections (CEIs).<sup>2</sup>

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

**Commitment RCRA02.s:** Project by state the number of state LQGs to be inspected during the year under state authority. Inspections should be identified by inspecting agency. These inspections should be CEIs. Only one inspection per facility counts towards this coverage measure. At least 20% of the LQG should be covered by combined federal and state inspections unless approval is obtained to deviate from this requirement.

States may seek approval of alternative inspection plans that allow for flexibility from the requirement in RCRA02.s to inspect 20% of the LQGs in order to improve the outcomes of their compliance assurance activities. To obtain flexibility, each state must present a plan to the Region which, in consultation with Headquarters, will approve, ask for modifications or deny approval of the alternative plan. The Regions should note in the Budget Automated System (BAS) comment field, which states if any are choosing flexibility and which states if any are using something other than BRS for the universe. Complete guidance for developing an alternative plan is available:

<http://www.epa.gov/compliance/resources/policies/monitoring/rcra/fy08rcraguidancelqgproject.pdf>. The alternative plan must include, as a minimum:

- A description of the overall level of effort (inspections) and how it will decrease from the standard 20% LQG inspection approach;
- The scope of the inspections to be conducted in the alternative to the LQG inspections not planned above (e.g., the number of each type of generator to be inspected, industrial sectors to be focused on, etc.);

<sup>2</sup> RECAP (2003), which has been replaced by the current ACS system, also provided a measure for IQG inspections that was the equivalent of a CEI.

- The expected outcomes from the alternative approach; and
- A plan to measure the actual outcomes to show that the flexible approach is or is not achieving the desired outcomes.

### Federal Core Only

- i. Statutory mandated inspections

**Commitment RCRA03:** The regions are to annually inspect each treatment, storage or disposal facility operated by states or local governments as required under SWDA §3007(d). Pursuant to RCRA Section 3007(d), TSDFs operated by a state or local government for which a permit is required must be thoroughly inspected (i.e., generally a compliance evaluation inspection). The same type of RCRAInfo evaluations will be counted for this measure as is counted for RCRA01.

### ***Regional Enforcement***

Regions should follow the January 2004 RCRA Enforcement Response Policy (and subsequent revisions) which provides information regarding the classification of a violator's non-compliance and in the taking of timely and appropriate enforcement actions.

### ***Program Oversight***

For evaluating program performance, EPA will utilize the SRF as the primary tool to conduct consistent reviews of the monitoring, enforcement, and data quality, accurateness, and completeness in the RCRA Subtitle C program. EPA will utilize activities and results reported to RCRAInfo and ICIS to conduct regional and state reviews, so timely entry into the database is critical. EPA will review whether the regions and states meet the compliance monitoring commitments and whether the enforcement response, with regard to the type of enforcement tool utilized (e.g., administrative complaint, expedited settlement, NOV), the amount and type of penalties assessed, and the response time taken to address the identified non-compliance, is appropriate. In particular, as the EPA is looking to quickly address those violations that pose the greatest risk to human health and the environment, the Agency will also be looking at:

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

## ***2. RCRA Underground Storage Tank Subtitle I Program***

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

should be addressed by the Agency in accordance with its policies governing enforcement and compliance monitoring.

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

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities will complement and provide oversight of state activities, where and as appropriate. Federal compliance assurance and enforcement activities, however, cover all of Indian country because RCRA precludes EPA from authorizing tribal UST programs. Regions should, therefore, implement the UST program in Indian country in coordination with tribes and tribal consortium.

**NOTE:** The UST Compliance Act of 2005 requires EPA and the state RCRA Subtitle I programs to conduct RCRA 9005(c)(1) inspections at 100% of the universe of underground storage tanks (USTs) that were not inspected from December 22, 1998 through August 8, 2005, and to complete these inspections by August 8, 2007. In addition, all USTs must be inspected every three years thereafter. For FY2010, regions should continue to focus on implementing the “Strategy for an EPA/Tribal Partnership to Implement Section 1529 of the Energy Policy Act of 2005.”

[http://www.epa.gov/oust/fedlaws/Tribal%20Strategy\\_080706r.pdf](http://www.epa.gov/oust/fedlaws/Tribal%20Strategy_080706r.pdf)

Regions should refer to the federal facilities section for guidance on including federal facilities in core program activities where applicable. Also, continued investments in outreach and assistance should be strategically focused (e.g., persons operating facilities in Indian country and persons owning small businesses with compliance problems).

### ***Regional Monitoring and Enforcement***

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

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

Recommended factors to consider in identifying facilities for inspection under the UST program include:

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

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

### ***Program Oversight***

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

### ***3. Imminent and Substantial Endangerment***

Though not a specific element of the RCRA core programs, regions should utilize RCRA section 7003 when appropriate for endangerment posed by solid waste, hazardous waste, and underground storage tanks. Regions should refer to the appropriate EPA policies and guidance regarding the use of this authority.

## **C. Toxic Substances Control Act (TSCA) Core Program**

The Agency's TSCA program consists of four major elements: "core TSCA"; PCBs; TSCA Asbestos, which includes the Worker Protection Standards, the Model Accreditation Plan program and other requirements; the Asbestos Hazard Emergency Response Act (AHERA), and lead-based paint. Title III Radon activities will not be covered in this section.

OECA and the regions should evaluate the overall effectiveness of the federal TSCA compliance and enforcement program to ensure the most efficient and effective utilization of resources possible. These analyses should address whether TSCA compliance and enforcement activities address program priorities; utilize effective targeting strategies; identify and take appropriate enforcement action on violations; prioritize and track tips and complaints; assess appropriate penalties; have written procedures/guidelines consistent with Agency policy to guide activities; have adequate QA/QC programs in place; offer adequate inspector training

which complies with the EO 3500.1 training requirements; and accurately report data to the appropriate data systems in a timely manner.

The TSCA Compliance Monitoring Grants are covered by the OMB requirement to include a standardized template for reporting results in state grant agreements. The templates are for use by the states to report their state grant results.

### *1. Core TSCA*

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

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

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

### ***Performance Expectations***

<p><b>Commitment TSC01:</b> Project the number of Core federal TSCA inspections for regions maintaining an investment in core TSCA (sections 4, 5, 8, 12 and 13).</p>
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### *2. PCBs*

A core PCB program is vital to protecting human health and the environment by ensuring an inspection presence where PCBs continue to be used, stored, and shipped. In FY 2010, the regions should focus their enforcement resources to confirm that approved closure/post-closure plans and cost estimates reflect the current waste management and contamination situation at PCB storage and disposal facilities. Regions should review financial assurance mechanisms in support of OECA's national enforcement priority. Enforcement follow-up to violations detected as a part of these inspections should promote,

where possible, the retirement of PCB transformers through Supplemental Environmental Projects (SEPs). Tips and complaints should be followed-up based on potential risk posed by each violation.

Regions should work with states/tribes operating under TSCA compliance monitoring grants to address these priorities as well as state/tribal priorities. Regions that award TSCA compliance monitoring grants to states and tribes need to submit mid-year and end-of-year reports to OC. In order to improve the efficiency of PCB inspections, OECA will continue to implement the field use of the tablet computer with software designed to prepare for and conduct inspections and generate inspection reports with supporting documentation and completed ICIS compliance monitoring data sheets. In FY 2010, PCB inspectors will be required to use provided equipment to conduct PCB inspections and prepare their inspection reports.

### ***Performance Expectations***

Inspections should be conducted in each state to assure equitable protection. There is an effort underway to discuss with the Regions criteria that should be used to determine what constitutes a viable and protective inspection program that provides equitable protection across the ten Regions, states and tribal lands. A workgroup is being established to identify the criteria for a base PCB inspection program. In advance of the work of that group, in keeping with the goal to ensure equitable protection, during FY 2010, regions should continue to inspect 33% of regional PCB commercial storage and disposal facilities. If the region will not inspect 33% of the commercial storage and disposal facilities, the region must explain its decision in the comments field. In addition, regions must report the total number of PCB inspections at facilities other than those at commercial storage and disposal facilities. These inspections represent the core program.

When Regions are reporting their core commitments, by state, the Regions may consider the compliance monitoring effort being undertaken by a state that is inspecting on behalf of the Agency when reporting the Region's commitment in that state. In addition, for those states that receive the TSCA compliance monitoring grant, the region must conduct oversight inspection(s) as part of good grant management.

<b>Commitment PCB01:</b> Report the total number of PCB inspections. In the Comment Section, breakout the total number of federal inspections by TSF and Core, by state
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As part of the Agency's Persistent Bio-accumulative Toxics (PBTs) program, OECA will continue to work with regions to further decommission PCB-laden equipment. Federal compliance incentives programs will be initiated, as appropriate. Regions are encouraged to work with OECA when developing their own compliance incentive programs based on regional needs and priorities.

### *3. TSCA Asbestos*



Compliance assistance will be an important focus of OECA activity for the TSCA AHERA federal program in FY 2010 with a secondary focus on traditional enforcement as appropriate. Where a Local Education Authority (LEA) needs assistance in managing its environmental compliance, there are a variety of compliance and enforcement tools available such as EPA's HealthySeat program. This program/tool helps school districts evaluate and manage their environmental, safety and health issues. See <http://www.epa.gov/schools/healthyseat/index.html> for details. The regions are expected to ensure inspection coverage in each state by either EPA, Senior Environmental Employment Program (SEE), or state/tribal inspectors. In addition, if the regions receive a complaint containing allegations which provide a reasonable basis to believe that a violation has occurred, the region is required by statute to investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

Follow-up includes evaluating the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state/tribe as appropriate and track it through resolution; or 2) obtain additional information, e.g., through phone calls, and inspect, if appropriate. Special attention should be given to tips alleging asbestos contamination at schools. Inspections should address charter schools, public schools, private schools, and religious schools. Inspections may be conducted for the Model Accreditation Plan, Worker Protection Standards, and other Section 6 regulations. Regions that have states with TSCA compliance monitoring grants must complete oversight inspections as part of good grant management. Regions that award TSCA compliance monitoring grants to states/tribes are reminded to submit mid-year and end-of-year state grant evaluation reports to OC.

Where applicable, the regions should encourage states/tribes to develop their own regulations and apply for a "waiver". The regions must ensure that authorization agreements, which authorize employees of state and tribal governments to conduct inspections on EPA's behalf are in place with states/tribes that receive TSCA Compliance Monitoring grants for TSCA Asbestos (non-waiver states only). Regions must ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed according to the September 30, 2004 memorandum entitled *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA*. Also, please see the August 5, 2005 memorandum for the *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf*. In addition, regions must review and provide feedback that addresses the quality of the inspection/reports and the action taken by the region.

### ***Performance Expectations***

Inspections should be conducted in each state to assure equitable protection. There is an effort underway to discuss with the Regions criteria that should be used to determine what constitutes a viable and protective inspection program that provides equitable protection across the ten Regions, states and tribal lands. A workgroup is being established to identify the criteria for a base AHERA inspection program. In advance of the work of that group, in keeping with the goal to ensure equitable protection, during FY 2010 the regions are to ensure compliance monitoring activities are undertaken in each state and in Indian country. At a

minimum, 6 LEAs should be inspected in each state. The expectation is the LEA inspection will evaluate at least 3 schools within the LEA with the total number of schools inspected not to exceed ten (10) percent of the total schools within the LEA. The number of school buildings inspected should be sufficient to determine the overall compliance of the LEA. The compliance monitoring activity can be met by regional inspections of having the states inspect on behalf of the Regions. The type of schools to be inspected are to be determined by the Region in consultation with the state.

When Regions are reporting their inspection commitments, by state, the Regions may consider the compliance monitoring effort being undertaken by a state that is inspecting on behalf of the Agency when reporting the Region's commitment in that state.

<p><b>Commitment ASB01:</b> Report the number of federal TSCA asbestos inspections. In the Comment Section, Regions will break out the number of federal inspections, by state.</p>
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If the region cannot perform the minimum level of compliance monitoring coverage in each state or Indian country, whether it is the region or the state/tribe on behalf of the region, the region must provide an explanation based on facts and provide a rationale for why the region cannot implement an adequate inspection program.

OECA will discuss with regional toxics managers at national meetings, scheduled conference calls, and one-on-one conversations with individual regions the commitments, mid-and end-of-year results, and inspection priorities.

#### *4. Lead-Based Paint Program*

The national lead-based paint (LBP) program will focus on meeting the 2010 goals established in the President's Task Force report by developing and implementing an integrated strategy which will include the full range of compliance assistance, incentives, monitoring and enforcement tools, working with HUD, states, and tribes, as appropriate. The regions are encouraged to develop an integrated strategy that includes methods to better target compliance activities, such as partnering with state/tribal and local health care providers to identify geographical lead poisoning "hot spots." Targeting may include establishing the baseline universe of lead-poisoned children within a hot spot, with the goal of reducing the number of such children through compliance and enforcement.

The recently-promulgated Renovation, Repair and Painting Rule (R, R & P Rule) is a major new component of the lead program. In developing its program to enforce the R, R & P Rule, each region should move towards an integrated strategy, appropriate for the region, for enforcing all of the components of the lead-based paint program. In the past, we have asked the regions to focus primarily on Section 1018 Disclosure Rule violations with a secondary focus on violations in tribal areas and non-authorized states and for Section 402 Abatement, Training and Certification Rule and the Section 406(b) Pre-renovation Notification Rule. In 2010, regions should begin to commit at least 10% of existing enforcement resources to establish and demonstrate a credible R, R & P enforcement program to both gain compliance and encourage states to seek delegation. Enforcement of Sections 402 and 406 in non-

authorized states should be combined with appropriate oversight of authorized state/tribal 402 and 406 programs. Headquarters broadened the language in the State and Tribal Assistance Grant (STAG) guidance so the regions can work with the authorized programs to fund a full range of compliance and enforcement activities and not just compliance monitoring activities.

In addition to targeted efforts, regions should screen for appropriate follow-up to tips and complaints alleging potential 1018 and R, R & P violations, and Sections 402 and 406 violations in tribal areas and non-authorized states.

### ***Performance Expectations***

In states without authorized Section 402 programs, regions should conduct targeted inspections of training providers and inspect work sites. This activity should be briefly described in the work plan submission as a rationale for any trade-offs with available compliance and enforcement resources.

<b>Commitment LED01:</b> Number of 1018/402/406 federal inspections.
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### **D. Federal Insecticide, Fungicide and Rodenticide Act Core Program**

This NPM Guidance is directed towards the EPA core FIFRA program at headquarters and the regions. Regions should refer to the Federal Facilities section (Section I) for guidance on including federal facilities in core program activities, where applicable.

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

In FY 2010, Regions will continue to implement the recommendations of the Worker Protection Standard Program Review Report and will begin implementation of the pesticide container/containment rules promulgated in 2006. The focus areas identified in FY 2009 will continue to be areas of focus in FY 2010. In addition, one new federal program focus areas has been identified for the pesticide compliance and enforcement program. The “Occupational and General Population Pesticide Use,” will focus on recent OPP regulatory actions on pesticide products with significant use impact. All regions should commit to participate in the imports focus area and in at least one additional focus area identified for FY 2010. Regions should utilize one or more of the implementation approaches outlined in the “2010 Regional Implementation Strategy.”

Compliance Assistance

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

#### Compliance Incentives

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

#### Monitoring and Enforcement

Regions should work with pesticide state lead agencies and tribal pesticide agencies to target and conduct inspections and investigations to support the pesticide focus areas identified in the 2008-2010 Joint OPP/OECA State/Tribal Cooperative Agreement Guidance. Regions should target inspection coverage in areas, including those areas of Indian country, where there is no coverage through EPA/State Cooperative Agreements.

For imports, Headquarters and regions will continue workgroup activities identified in the 2009 Final Regional Implementation Strategy. Regions should conduct targeted inspections, placing special emphasis on non-registered and high risk products as well as counterfeit pesticides and pesticides involving unapproved sources. Regions should also work with pesticide state lead agencies and tribal pesticide agencies to target and conduct inspections and investigations to support at least one of the following pesticide focus areas for FY2010:

#### Fumigant Application Initiative

The consequences of fumigant misuse are often serious and frequently result in death or hospitalization. If a pattern of misuse is identified, it is vital that EPA work with the states to establish a proactive monitoring program rather than simply documenting violations and the consequent health effects as a basis for an enforcement action. While the registrations of certain fumigants may be revised in a year or two to upgrade labeling and require greater care and more stringent precautions, regions should not delay enforcement of the current requirements.

The fumigant/fumigation focus area encompasses product regulatory compliance and use/application for all areas of fumigation including structural (residential and commercial), transportation vehicles and containers, soil, agricultural commodities, and other products. Targeting should consider production factors (facility location, production volume, and product) as well as use/application factors (use patterns of concern and volume/frequency of use). In addition to compliance monitoring of the standard residential and agricultural fumigant products and applications, we encourage the regions and states to examine and monitor fumigant use in specialty applications (e.g., transportation vehicles, granaries,

commodity warehouses, etc.) in order to ensure broad compliance monitoring coverage of fumigant use. Regions participating in this focus area will develop a regional strategy that identifies specific fumigant/fumigation aspect(s) to be focused on in their respective region and states (e.g., residential fumigation or greenhouse fumigation, fumigant production, etc.), addressing unique regional use patterns or product compliance issues. The strategy should include an implementation plan incorporating state participation and other regional implementation activities.

### Return/Collection Centers

Headquarters will continue to collaborate with the regions, as appropriate, to investigate and assess the scope of the problem and determine the need for future compliance monitoring and enforcement. Regions should continue to focus on identifying return/collection centers and the retail stores that deal with those centers and to monitor compliance with FIFRA regulatory requirements. In addition to monitoring the processes involved in the transfer, handling, storage, repackaging, disposal, and redistribution of the pesticide products involved, regions should expand their investigative efforts to include distribution warehouses. Specifically, regions should target larger agricultural or consumer products production facilities and collect information on the distribution warehouses for follow-up inspection. In addition, regions should target inspections at facilities identified as 100% repackagers (repackaging of a registered product).

This investigation will allow EPA to assess the practices and compliance at these types of facilities/operations. Information obtained regarding disposition of overstocked and damaged pesticide products by big box stores and large distribution warehouses will provide a basis for determining whether a more focused compliance monitoring and enforcement strategy is warranted. EPA will investigate and assess the scope of the problem, including information concerning company location, details about their operations, and identification of FIFRA compliance problems associated with these collection centers and the stores supplying them.

### Occupational and General Population Pesticide Use (Targeting Regulatory Cancellations and Label Restrictions)

By 2011, EPA's Office of Pesticides Programs (OPP) has committed to improve the health of those who work in or around pesticides by reaching a 50 percent targeted reduction in moderate to severe incidents for acutely toxic agricultural pesticides with the highest incident rates such as chlorpyrifos, diazinon, malathion, pyrethrins, 2,4-dichlorophenoxy acetic acid (2,4-D), and carbofuran.

Production establishment inspections (PEIs) and marketplace inspections will help monitor recent OPP regulatory actions on certain pesticide products. The focus should be on pesticide products with significant use impact, as identified in the following list of products that were the subject of recent product use restrictions: azinphos-methyl, chlorpyrifos, carbofuran, 2,4-dichlorophenoxy acetic acid (2,4-D), malathion, diazinon, and pyrethrins. Regions participating in this focus area will develop a regional strategy to identify specific

pesticide products for their region, addressing unique regional use patterns and/or product compliance issues. Regions should encourage their states to conduct similar inspections in the marketplace to monitor label compliance and should consider monitoring use patterns impacted by the label changes by conducting use observation inspections involving these products.

EPA and state pesticide control officials should identify and pursue persons who promote or distribute products in a manner that is believed to violate FIFRA and/or state pesticide laws. In addition, federal and state agencies are encouraged to identify and raise issues that have a national impact on the pesticide program. Regions are also expected to track and prioritize tips and complaints, and follow-up as needed. Follow-up means that the region needs to evaluate the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state or tribe as appropriate, and track it through resolution consistent with national guidance; or 2) obtain additional information through federal investigation or a show cause letter, if necessary, taking federal action as appropriate; or 3) determine that follow-up is not necessary.

### ***Performance Expectations***

<b>Commitment FIFRA-FED1:</b> Project regional (federal) FIFRA inspections.
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### ***Program Oversight***

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

The FIFRA Cooperative Enforcement Grants are covered by the new OMB requirement to include a standardized template for reporting results in state grant agreements. The templates are for use by the regions to report their state and tribal grant results. A copy of the FIFRA template is in Attachment C.

### **IV . Requirements: Criminal Enforcement (Sub-objective 5.1.4)**

Criminal investigations and prosecutions will be pursued against violations which involve “culpable conduct,” i.e., that is intentional or knowing or which meet the legal standard for criminal negligence, as well as violations which represent the most significant risks of harm to the public or the environment. During FY 2010, the criminal enforcement program will continue to emphasize cases with significant environmental, human health, and deterrence impact while balancing its overall case load with “core” cases across all pollution statutes. Criminal investigations may, in addition to suspected violations of the environmental statutes, may also involve associated violations of the U.S. Criminal Code (Title 18 USC).

The criminal enforcement program will emphasize six priority areas:

- National Enforcement Priorities,
- stationary source air cases,
- high impact cases, and
- repeat or chronic civil noncompliance.
- import/export cases, and
- Regional Enforcement Priorities

While the results of criminal cases will vary based on specific characteristics of the cases investigated, as well as by the prosecutorial and sentencing decisions made by the Department of Justice and the federal courts, an emphasis on these priorities will yield greater environmental and public health benefits and deter illegal corporate and individual behavior. The criminal enforcement program will also work to maintain the historically high conviction rate for defendants charged with environmental crimes, which is a critical ingredient of deterrence. Between FY 2004 and FY 2008, the conviction rate for defendants in concluded charged cases was over 90 percent.

The criminal enforcement program revised the majority of its GPRA performance measures in FY 2009. The four primary program measures, which will be fully implemented beginning in FY 2010, will be:

- recidivism (current measure)
- cases with an enforcement consequence (new measure)
- cases with an individual defendant (new measure)
- percentage of high impact cases (new measure)

The new performance measures emphasize the criminal enforcement program's law enforcement function and the deterrent impact of criminal prosecutions. For example, the new measure on the charging of individuals emphasizes the deterrent impact of the criminal enforcement program. While both corporations and individuals may be assessed a monetary fine, only individuals can be sentenced to incarceration – the most severe sanction in the U.S. law enforcement system and one which cannot be passed along to the American consumer as simply a “cost of doing business.” “High impact cases” will be designated through a methodology based on specific case characteristics such as death or serious injury, the nature or exposure of the release, and the nature of the violator (e.g., size, past enforcement history, etc.). Data for all of the measures will be collected through the program's electronic docket, the Criminal Case Reporting System.

During 2010, the criminal enforcement core program will continue on-going efforts to effectively coordinate criminal and civil enforcement in the regions. Information sharing and cooperation between EPA's civil and criminal programs, consistent with all legal requirements, is critical to the success of the Agency's overall enforcement program. To achieve this end, the Special Agent-in-Charge (SAC) of the Criminal Investigation Division Area Offices will communicate and coordinate with the civil enforcement offices.

Each region will establish and operate a civil/ criminal case screening and coordination process. The goal of the case screening process is to help ensure that a violation is addressed through the most appropriate enforcement tool – administrative, civil or criminal. Civil and criminal enforcement personnel should not only conduct regularly-scheduled meetings, but should also meet on an ad hoc basis to receive debriefings related to significant and recently-completed inspections. In particular, attention should be devoted to information sharing related to the following types of cases: (1) national enforcement priority cases/inspections; (2) regional enforcement priority cases/inspections; (3) cases involving violations at multiple facilities; (4) cases/inspections involving large and sophisticated corporations whose violations have demonstrable environmental impact; (5) and cases involving facilities categorized as SNC, HPV, or another category of repeat "bad actors."

To further facilitate civil-criminal communications, EPA regions will also:

- track compliance with consent decrees and administrative orders, taking all necessary actions to ensure continued compliance; including referring to for criminal enforcement review where appropriate.
- identifying leads appropriate for criminal investigations based upon the criteria in the January 12, 1994, Memorandum on the Exercise of Investigative Discretion;
- submit appropriate leads – including cases or aspects of cases that were initially developed for administrative or civil enforcement but later reveal potential criminal wrongdoing – to the SAC so that decisions can be made as to whether violations will be pursued administratively, civilly, or criminally; and
- provide technical support to CID investigations, provide regional personnel as witnesses when necessary, and maintain legal staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crimes.



## **SECTION V: NATIONAL PROGRAM CORE REQUIREMENTS FOR ADDITIONAL OECA PROGRAMS UNDER GOAL 5**

In addition to the national priorities and core programs that can be specifically assigned to one of the four Strategic sub-objectives of water, air, waste/toxic/pesticides, and criminal enforcement, OECA has several programs that contribute to the goals of more than one sub-objective. These programs are: Federal Activities, Federal Facilities Enforcement and Compliance, Multi-media and Rapid Response, Environmental Justice, Indian country, and Emergency Planning and Community Right to Know Act (EPCRA). In addition, OECA has overall program requirements for data quality and training.

### **A. Federal Activities Program**

The Federal Activities core program for FY 2010 focuses on the following major areas:

#### *1. National Environmental Policy Act (NEPA) Implementation*

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

#### NEPA / CAA §309 Review:

Carry out EPA's responsibilities to review and comment on all major proposed federal actions to ensure identification, elimination, or mitigation of significant adverse effects.

#### NEPA Compliance and "Cross-cutters":

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

Prepare environmental analyses (EISs or EAs) for new source National Pollutant Discharge Elimination System (NPDES) permits, for states/tribes without authorized NPDES programs; off-shore oil and gas sources, including permits for deepwater ports, EPA laboratories, and facilities; and Clean Water Act wastewater treatment plant grants.

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

NEPA CAA 309 Review and NEPA Compliance:

Regions shall enter the results of their §309 EIS reviews and NEPA compliance actions into the Lotus Notes EIS Tracking Database maintained by HQ OFA, and the SAAP system maintained by HQ OW, respectively. Additionally, regions will report to the Office of Federal Activities quarterly on the status of their 309 reviews and NEPA compliance actions pursuant to OFA's GPRA reporting process, and provide other reports as may be required by the American Recovery and Reinvestment Act of 2009..

*Performance Expectations*

- **Performance Measure:** 70 percent of the significant impacts identified by EPA during the NEPA review of all proposed major federal actions will be mitigated in order to preserve air and water quality, wetlands, aquatic and terrestrial habitats, and endangered species; to protect Environmental Justice communities; and to prevent degradation of valued environmental resources.
- **Performance Measure:** 90 percent of EPA projects subject to NEPA Environmental Assessment or Environmental Impact Statement requirements (water treatment facility project and other grants, new source NPDES permits and EPA facilities) result in no significant environmental impact.

*2. International Compliance Assurance and Transboundary Movement Of Hazardous Waste*

- Improve environmental performance and cooperation in accordance with Goal 6 of the U.S./Mexico Border 2012 plan (Regions VI and IX).
- Enhance enforcement, compliance, and capacity building efforts with Mexico and Canada relating to trans-boundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., PCBs, mercury), and other regulated substances (Border Regions).
- Improve performance of joint responsibilities along the border and points of entry into the United States by working with the Bureau of Customs and Border Protection (CBP) (all regions).
- Promote international environmental enforcement through participation in relevant organizations and networks, such as the Enforcement Working Group of the North American Commission for Environmental Cooperation (CEC) and the International Network for Environmental Compliance and Enforcement (INECE), and, in particular, its Seaport Environmental Security Network (regional participation as appropriate, based on subject matter).
- Fulfill International agreements and the Agency's RCRA obligations regarding notification of transboundary movement of hazardous waste (all regions).

a. International Enforcement Capacity Building

The majority of requested commitments fall to Regions VI and IX for U.S. Mexico border work in connection with the La Paz Agreement. Regions VI and IX will continue the implementation of U.S.-Mexico work plans for enforcement and compliance cooperation in the border region and work with CBP to improve performance of joint responsibilities along the border.

b. Import/Export Program

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

In order to ensure a coordinated approach between EPA and the Bureau of Customs and Border Protection, regions must also alert headquarters regarding interactions with the Bureau regarding specific transactions, and must submit all other requests and inquiries for CBP to the liaison official identified by CBP for this purpose, while also informing headquarters of these contacts.

c. Participation with Chinese Agencies on Joint Projects

In accordance with agreements signed in December 2007, EPA will participate with agencies of the Chinese government regarding the development of joint projects on environmental law development and enforcement, environmental impact assessment, emergency response, regional environmental management, and compliance with environmental requirements for traded products. These projects will involve investments by OECA and other Headquarters Offices and Regional Offices. Some of these commitments have been implemented in FY 2008 and FY 2009, and additional commitments are expected in FY 2010 (Regions 3,5, and 9, and other regional participation as appropriate, based upon subject matter).

d. Import Safety

This initiative, mandated by Executive Order, involves projects that will require investments by OECA and other Headquarters Offices and Regional Offices. Some of

these commitments have been implemented in FY 2008 and FY 2009, and additional commitments are expected in FY 2010.

## **B. Federal Facilities Enforcement and Compliance Program**

As an integral process of EPA's on-going efforts to improve environmental compliance at the approximately 10,000 regulated federal facilities nation-wide, FFEO and the Regional Federal Facilities Program Managers and Staff developed a FY 2010 draft Program Agenda which summarizes focus areas for FY2010. This Federal Facilities core program section, which includes more details and background about FY 2010 activities, is based upon the draft Program Agenda.

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

These activities serve as a baseline of priority activity from a national program perspective, in addition to which the regions may pursue their own regionally-identified priorities (including regional activity in support of the National Priorities, regional integrated strategies, geographically-based inspection "sweeps," etc.). As in the past, FFEO is willing to discuss changes necessitated by particular regional conditions. All federal facility activities will be measured using the relevant Conclusion Data Sheets and counted in achieving OECA's overall FY 2010 goal of reducing air, water and waste pollution, and making improvements in environmental management practices.

### **Federal Facility Integrated Strategies**

Integrated strategies that align enforcement, compliance, and stewardship activities toward maximum effect, help the Federal Facilities Program guide its actions toward greater environmental and health benefits. Integrated strategies include a balance of activities focused on (i) assisting facilities to achieve and maintain compliance, (ii) inspecting and monitoring compliance, and (iii) prosecuting enforcement actions to correct and deter non-compliance.

In recent years FFEO and the Regions implemented Integrated Strategies in the following areas:

- Stormwater (begun in FY 2006 and continuing)
- Federal Laboratories (FY 2007 to FY2009)
- Federal Underground Storage Tanks (begun in FY 2007 and continuing)

Past EPA work in these areas has included providing compliance assistance and conducting inspections. Beginning last year (FY 2009), the emphasis turned to taking timely and appropriate enforcement actions, pursuant to existing EPA enforcement response policies,

to address violations. Enforcement actions – particularly in these integrated strategy areas – are essential to deterring future violations of environmental laws. Regions are also urged to take enforcement actions in National Priority areas including taking enforcement actions to address violations at BIA schools as part of the National Indian Country Priority. Summaries of the existing and proposed Integrated Strategies follow below.

a. CWA/NPDES Stormwater Integrated Strategy

**Background:** OECA's National Stormwater Strategy contains a federal facilities component through FY 2010. The federal facility component of the strategy focuses on construction activities at federal facilities and integrates compliance assistance, compliance monitoring, and enforcement to improve stormwater compliance. In addition to providing compliance tools, including model Stormwater Pollution Prevention Plans (SWPPPs) and resources on FedCenter to regulated federal agencies, EPA advocates increased inspections of federal facilities and their contractors to determine compliance with permitting requirements, Best Management Practices (BMPs), SWPPPs, monitoring, and record-keeping requirements.

**Actions:** For FY 2010, the Regions are asked to focus on enforcement actions to address stormwater violations at federal facilities. Where appropriate, the regions are asked to continue to pursue enforcement actions against both contractors and federal agencies for stormwater violations. FFEO developed a suite of informal enforcement tools for use against federal agencies. These tools are posted at FedCenter (<http://www.FedCenter.gov>). The ordinary complement of enforcement tools remain available for use against private contractors as well. The use of Supplemental Environmental Projects, (SEPs) – particularly those that prevent quantifiable amounts of pollution – is strongly encouraged. Regions are also urged to continue stormwater inspections of federal facilities and to direct federal facilities and their contractors to existing compliance assistance resources, particularly at FedCenter

Regions should ensure that the appropriate conclusion datasheets are filled out and entered in ICIS for each and every federal facility stormwater compliance assistance action, inspection, and enforcement action. Please utilize the outcome measures and the stormwater benefits calculators and report, at a minimum, the number of stormwater cases settled, pounds of sediment reduced, EPA-assisted inspections, training courses offered, and compliance assistance activities conducted.

b. Federal Underground Storage Tank Strategy

**Background:** The Energy Policy Act of 2005 established new statutory requirements specifically designed to improve the environmental management of federal facility underground storage tanks (USTs). In particular, the Energy Policy Act included reporting deadlines for federal agencies and states related to federal agency compliance with UST requirements; inspection deadlines for EPA and states to inspect federal facility USTs; and a waiver of sovereign immunity to bolster state enforcement authority. Because of this increased UST focus, EPA's federal facilities program created an integrated strategy to improve management of federal facility USTs.

**Actions:** Over the past few years, the Regions and FFEO took a number of actions to improve UST management at federal facilities by providing compliance assistance to federal agencies; encouraging audits and self-disclosures; working to help regions and states meet the inspection requirements; and supporting and enhancing EPA's enforcement efforts to address non-compliance. Specifically, in FY 2007, 2008 and 2009, EPA performed over 400 UST inspections at federal facilities, reviewed state and federal reports on federal USTs to aid in the identification of compliance trends, delivered a number of workshops to help federal agencies comply with UST and above ground storage tank (AST) requirements, developed on-line training for federal agencies and developed an Environmental Management System (EMS) crosswalk for USTs. During FY 2007 and 2008, FFEO began working closely with the Regions to review enforcement follow-up for all FY06-07 inspections where deficiencies were identified. As a result EPA took more than forty enforcement actions in FY 2008. Also in FY 2008, FFEO requested information from the Federal Emergency Management Agency (FEMA) on numerous USTs. FFEO, Regions and other offices continue to require FEMA to gather and submit information on its USTs

In FY 2010, FFEO plans to ensure that all FEMA tanks are identified, in compliance, or cleaned up, as needed, using enforcement tools. In FY 2010, the federal facilities program will continue to work with Regions and states to meet the three year inspection cycle requirements of the Energy Policy Act and to ensure appropriate enforcement follow-up. The federal facilities program will work to ensure that the program is sustainable and can be transitioned back to the core federal facilities enforcement program (expected to occur in FY2011).

**Potential New Integrated Strategies in FY 2010:** In FY2009, FFEO and Regions investigated several new Integrated Strategy areas. Based on that work, FFEO is proposing two new possible Integrated Strategy areas for FY 2010: Federal Prisons and RCRA Subtitle C Compliance (other than Treatment, Storage and Disposal (TSD) and UST requirements). Depending on comments received on this document, FFEO and the Regions may adopt both, one or neither as new Integrated Strategies for FY 2010. Descriptions of the two new potential areas follow.

#### c. Federal Prisons Strategy

**Background:** The Bureau of Prisons (BoP) is a division of the U.S. Department of Justice. It is responsible for the care and custody of over 201,000 federal prison inmates across the United States. According to the BoP's website, it owns and operates 114 prison facilities, with an additional 13 prison facilities operated by private security firms or state or local governments. The 114 BoP operated facilities have the following characteristics:

- 82 facilities have a CAA, CWA or RCRA- C permit.
- 11 other facilities have a SDWIS permit.
- BoP operates approximately 104 USTs.
- According to a 2008 GAO report, BoP has completed 30 prison construction projects over the past ten years and plans to continue new construction at a greater rate in the future.

- Many BoP facilities, especially those with UNICOR operations, conduct manufacturing or industrial processes.

Past EPA inspections have revealed a number of violations. DOJ's Office of Inspector General and Office of Special Counsel have investigated health and safety problems at BoP facilities, particularly UNICOR facilities. In recent years, Regions 3, 5 and 6 have found violations. In 2007, Region 3 and BoP signed an Audit Policy agreement under which BoP is performing self-audits and undertaking corrective actions under the Region's oversight. Region 4 and BoP are currently negotiating a similar agreement covering BoP facilities in Region 4.

**Actions:** FY 2010 activities are still being developed and will not be finalized until after comments are received on this document. The following activities are possible if Federal Prisons becomes an Integrated Strategy in FY 2010.

FFEO, in close consultation with the Regions, will initiate negotiations with BoP on a nation-wide Audit Policy agreement covering all BoP facilities not otherwise covered by such an agreement or not the subject to an ongoing EPA enforcement action.

For facilities not covered by an Audit Policy Agreement, Regions are asked to (1) continue to conduct inspections of BoP facilities and (2) take timely and appropriate enforcement actions to address violations found by inspections and (3) continue to conduct inspections of BoP facilities. Where appropriate, FFEO advocates including environmental management system (EMS) improvements and Supplemental Environmental Projects (SEPs) as part of enforcement action settlements

For facilities covered by Audit Policy agreements, Regions are urged to timely review self-disclosures made by BoP. Regions are also urged to enforce the provisions of those agreements if violated.

#### d. RCRA Non-TSD/Non-UST Strategy

**Background:** More than 6000 federal facilities are subject to non-UST RCRA requirements. Almost 50% of these facilities have never been inspected by EPA or a state. More than 5,500 of these facilities are categorized as Small Quantity Generators (SQGs), Conditionally-Exempt Small Quantity Generators (CESQGs) or transporters.

Based on Regional experience, smaller RCRA facilities may often be out of compliance. Additionally some RCRA waste generating facilities may have escaped EPA's oversight. These facilities are often referred to as non-notifiers. EPA has found many common problems at smaller facilities and non-notifiers, such as:

- Failure to apply for a RCRA permit,
- Failure to properly characterize wastes, and to properly transport, store or dispose of them, and
- Incorrect categorization of facilities as SQGs or CESQGs when they are really Large Quantity Generators (LQGs).

Recent experience in EPA's Federal Laboratories Integrated Strategy supports a focus on RCRA compliance. The top ten violations at federal labs were RCRA violations. Many of the federal labs were categorized at SQGs or CESQGs. As part of the strategy, EPA developed live and computer based training for federal lab personnel, much of which is based on RCRA compliance issues.

**Actions:** FY 2010 activities are still being developed and will not be finalized until after comments are received on this document. The following activities are possible if RCRA non-TSDF/non-UST becomes an Integrated Strategy in FY 2010.

Regions are asked to inspect federal facilities to determine their compliance with RCRA requirements, other than requirements applicable to TSD facilities and USTs. Regions are asked to focus primarily—but not necessarily exclusively—on (1) smaller facilities, such as SQGs or CESQGs, (2) facilities suspected of not being under state or EPA RCRA Subtitle C oversight to date, (i.e., non-notifiers) and (3) facilities which have been under-inspected by EPA and states. In accordance with existing EPA policy and procedures, Regions are asked to take timely and appropriate enforcement actions to address violations and improve compliance at the facilities. Where appropriate, FFEO advocates including environmental management system (EMS) improvements and Supplemental Environmental Projects (SEPs) as part of enforcement action settlements. In addition, Regions and FFEO can highlight to federal facilities the many compliance assistance tools already developed to help facilities understand and comply with RCRA Subtitle C requirements including tools developed specifically for SQGs.

NOTE: Where a region demonstrates that their federal facilities universe is not applicable for current or future Integrated Strategies, the regions are encouraged to work with FFEO through the Annual Commitment System to determine an appropriate substitute commitment.

#### e. Other Areas

In FY 2010, FFEO and the Regions will continue to pursue OECA's Indian Country National Priority with emphasis on BIA Schools by providing comprehensive enforcement follow-up on previous BIA inspections.

FFEO will continue to review and research 1) the impacts of federal facilities on drinking water sources which may lead to a future integrated strategy and 2) potential activities including SEPs, to support climate change goals.

#### 1. Enforcement

FFEO strongly encourages the Regions to take enforcement actions to improve compliance at federal facilities. For FY 2010, federal facility resources should give first priority to taking appropriate and timely enforcement actions, as defined within relevant media-specific policies, for each federal facility inspected as a consequence of Federal Facility



Integrated Strategies efforts. Where appropriate, FFEO advocates including environmental management system (EMS) improvements and SEPs as part of enforcement action settlements. FFEO also urges the Regions to take timely and appropriate enforcement actions to address violations of clean up responsibilities.

Regions are reminded that all federal facility enforcement actions are considered nationally significant and require consultation with FFEO. FFEO will focus its resources to make these consultations timely and effective.

## *2. Compliance Assistance*

Compliance assistance remains a vital tool in abetting improved environmental compliance at federal facilities. With continuing budgetary constraints, it is imperative that compliance assistance efforts be leveraged through others and targeted efforts to support priority areas, which include the federal facility integrated strategy areas (listed above). With respect to environmental management systems (EMSs), EPA supports continual improvements in federal EMSs, including Environmental Management Reviews (EMRs) in integrated strategies where appropriate, including EMS improvements in enforcement action settlements and providing EMS-related compliance assistance during inspections at federal facilities.

FedCenter, the multi-agency independent federal facility environmental compliance assistance and stewardship center, is pivotal to future collaborative compliance assistance efforts. FedCenter serves as the catalyst for increased cooperative compliance assistance efforts both within EPA and other federal partners. In FY 2010 FedCenter will continue to provide federal agencies with the ability to electronically update their EMS progress into the OMB environmental scorecard process and provide on-line training in select integrated strategy areas. Further enhancements to FedCenter's environmental reporting capabilities will be completed in FY 2010 to better assist federal agencies as they carry out their environmental activities.

Each region shall conduct at least two compliance assistance activities (such as a seminar, training, workshop, education/outreach activity, etc.) to support the integrated strategy areas. These compliance assistance activities can be developed for delivery through the region or through FedCenter. If regions do not initially use FedCenter to deliver the assistance, FFEO strongly urges the regions to provide assistance to FedCenter to reach additional facilities. In FY 2010, FFEO plans to offer training related to integrated strategy areas electronically via FedCenter.

Regions are urged to detail their planned assistance activities in the ACS system to avoid duplication and encourage collaboration across regions. This commitment may be readdressed at mid-year in the event EPA receives substantially fewer compliance assistance resources in FY 2010.

<p><b>Commitment FED-FAC01:</b> Each region shall conduct at least two compliance assistance activities for Federal facilities to support the integrated strategy areas.</p>
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### 3. Compliance Incentives

EPA policy encourages regulated entities to conduct self-audits. If a region determines it is obtaining self-audit disclosures that are similar in scope and quality to an inspection, the region may request a reduction in their inspection commitments during the FY 2010 Annual Commitments (March-April, 2010) midyear modification process. In responding to such a request, FFEO would consult with other OECA program managers on the implications of such a change. Regions should refer to the compliance incentives activities description in Section III - Core Program Activities.

### 4. Compliance Monitoring

Through monitoring compliance, EPA seeks to ensure that federal facilities operate in compliance with environmental laws, especially in Integrated Strategy and exploratory areas.

#### *Single media inspections*

Each region shall perform ten inspections of federal facilities to support the integrated strategy areas, including the exploratory areas enumerated above. These inspections shall be conducted at different federal facilities to ensure that EPA maintains an adequate inspection presence at federal facilities. These inspections can be achieved through any combination of single media or multimedia inspections with the following limitations:

- A maximum of three UST inspections can count toward this goal.
- For any multimedia inspection conducted, it shall count as two inspections toward this goal.

For the purposes of this goal, a multimedia inspection consists of (1) a CAA, CWA, or RCRA program inspection plus at least one additional program under a different statute for the same facility, or (2) some combination of two or more CAA, CWA, or RCRA program inspections at the same facility.

**Commitment FED-FAC05:** Each Region must conduct ten inspections to support integrated strategy areas: CWA/NPDES Stormwater; Federal Underground Storage Tanks, (and if selected as Integrated Strategies in FY2010—Federal Prisons and RCRA Subtitle C/non-TSDF/non-UST compliance. These inspections can be achieved through any combination of single media or multimedia inspections with the following limitations: (1) a maximum of three UST inspections can count toward this goal and (2) for any multimedia inspection conducted, it shall count as two inspections toward this goal.

FFEO strongly encourages interested Regions to conduct multimedia inspections in Integrated Strategy areas. FFEO will provide contract support for multimedia inspections in Integrated Strategy areas as resources allow. To the extent that a Region has identified a Regional specific federal facility integrated strategy other than a national integrated strategy or other agreed upon areas to explore as potential future Integrated Strategies and wants to

substitute it for an inspection commitment, FFEO will consider that substitution. FFEO also encourages providing EMS related compliance assistance during all federal facility inspections.

The inspections identified here are those that are unique to the Federal Facilities Core Program and are in addition to those outlined in other OECA core program sections. These inspections may, however, simultaneously satisfy inspection commitments required in other OECA core program guidance.

### ***Data and Reporting***

At mid-year, FFEO will communicate the available data on federal facility core program accomplishments to each respective region. To accomplish this review, FFEO will pull regional performance data (e.g., enforcement actions, multi-media and single media inspections, compliance assistance activities) from the available database of record to serve as a basis for discussion within the region. Some data (e.g., multi-media inspections) must be reported manually by the region in order for FFEO to acknowledge progress on certain commitments. At the end of the fiscal year, FFEO will compile an end-of-the year summary to help evaluate the federal facility program performance and document regional accomplishments.

FFEO continues to work with other OECA Offices and Regions to develop reports which FFEO and all Regions can use to more efficiently retrieve federal facility data from ICIS. ICIS changes were highlighted in OC's FY 2008 mid-year reporting plan. FFEO issued guidance in April, 2008 to the Regions on properly identifying activities in ICIS that affect federal facilities. The April 2008 guidance and step by step instructions are posted in the ICIS Policy on demand (IPOD) database.

Regions should continue reporting federal facility CERCLA Records of Decision (RODs) into ICIS, first begun in FY 2006. It is especially important to report the substantial environmental benefits that result from those RODs. Guidance on calculating those benefits is in "Final Methodology for Estimating Superfund and RCRA Corrective Action Case Conclusion Data Sheet (CCDS) Environmental Benefits" dated December 12, 2003. Instructions for inputting benefit data into ICIS are in the ICIS Policy on Demand (IPOD) database. In 2008, OECA modified ICIS to allow reporting of ROD amendments, Explanations of Significant Differences (ESDs) and removal actions and their corresponding environmental benefits done by federal facilities at CERCLA sites.

### **C. Emergency Planning and Community Right to Know Act (EPCRA) Core Programs**

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

emergencies. EPA must ensure that companies report accurately and within required time frames. Although there is no target for assistance activities, assistance is an appropriate tool, in particular, for smaller entities who meet the reporting criteria.

### *1. EPCRA 313*

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

#### ***Performance Expectations***

<b>Commitment EPCRA01:</b> Number of federal EPCRA data quality inspections.
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<b>Commitment EPCRA02:</b> Number of federal EPCRA 313 inspections.
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### *2. EPCRA 304/311/312 CERCLA 103*

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

#### ***Regional Enforcement***

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

#### **D. Indian Country**

OECA supports the national program for improving the environment in Indian country through the Indian Country National Priority and by OECA's Indian Country Core Programs. In both the priority and core areas, EPA's enforcement and compliance assurance program works with federally-recognized Indian tribes (tribes) to improve compliance in Indian country and other tribal areas and in areas outside of Indian country where tribes and tribal members

have recognized rights and interests protected by treaty, statute, judicial decisions or other authorities, including Alaska (hereinafter referred to as “Indian country and other tribal areas”).

## 1. Indian Country National Priority

The Indian Country Priority’s primary goal is to work with tribes to significantly improve human health and the environment in Indian country in key areas by providing compliance assistance, conducting compliance monitoring, and taking appropriate enforcement activities.

After discussions with tribes, face-to-face meetings with representatives of the Tribal Caucus of EPA’s Tribal Operations Committee and Regional Tribal Operations Committees, and analysis of the range of compliance issues in Indian country, EPA is focusing on improving compliance at public drinking water systems, improving solid waste management compliance, investigating and reducing threats posed by illegal dumping in Indian country, and improving multimedia compliance at schools. Complete information on OECA’s National Indian Country Priority is available at <http://epa.gov/compliance/data/planning/priorities/tribal.html>

## 2 . Indian Country Core Program

EPA’s enforcement and compliance assurance program works with federally-recognized Indian tribes (tribes) to promote compliance through the use of appropriate compliance and enforcement tools in Indian country and other tribal areas and in areas outside of Indian country where tribes and tribal members have recognized rights and interests protected by treaty, statute, judicial decisions or other authorities, including Alaska (hereinafter referred to as “Indian country and other tribal areas”). Whether implemented directly by EPA or an approved tribe, selecting the appropriate tools - compliance assistance, incentives, monitoring, and enforcement - provide important gains in environmental and human health protection. In each area, EPA works closely and appropriately with tribes in carrying out compliance assistance, monitoring, and enforcement activities. In FY 2010, OECA and the regions intend to continue to maintain their presence in Indian country and other tribal areas in each media core program. In each area, EPA works closely and appropriately with tribes in carrying out compliance assistance, monitoring, and enforcement activities.

OECA’s compliance assistance and capacity building efforts in Indian country provide regulated facilities with the information and support necessary to maintain compliance. To support EPA’s tribal compliance assistance efforts, OECA, regions, and tribes have access to the *Tribal Compliance Assistance Center* (<http://epa.gov/tribalcompliance>) and the *Profile of Tribal Government Operations*. OECA and the regions should continue to use existing compliance assistance tools and tailor new compliance assistance tools for use by tribes and facilities in Indian country and other tribal areas. During FY 2010, OECA’s National Enforcement Training Institute (NETI) will continue to implement its Tribal Training Strategy and reach out to tribal environmental professionals and serve as an on-line registration and course clearinghouse for all compliance assurance and enforcement training offered by OECA and the regions. OECA’s National Indian Country Priority EPM resources are available to

fund research, demonstration, training, and investigations in Indian country and other tribal areas. Funding “circuit riders” who provide on-site compliance and technical assistance is extremely effective to tribes and tribal consortia is a very effective mechanism for promoting compliance in Indian country and other tribal areas. Regions must measure and report into ICIS the outcomes of 100% of tribal workshops, training, and on-site (re) visits conducted in FY 2009.

EPA conducts almost all compliance monitoring and enforcement of federal environmental programs and laws in Indian country because only a few tribes are currently authorized to operate a federal environmental program. As such, regions implement the compliance monitoring and enforcement National Program Core Requirements in Indian country. In the very limited cases where tribes have EPA-approved enforcement programs, regions oversee tribal enforcement compliance monitoring and enforcement in the same manner as they do with states as outlined in the National Program Core Requirements.

Geography and resources, however, may impact the ability of EPA inspectors to conduct inspections as outlined in the National Program Core Requirements. Regions should continue to consider authorizing tribal inspectors to conduct inspections on behalf of EPA. Regions should use the *Guidance for Issuing Federal EPA Inspector Credentials to States/Tribes* and the *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf*. OECA’s Indian Country Priority EPM resources are available to fund compliance monitoring activity, including the training of tribal inspectors.

EPA looks to three internal policy documents when civil violations of federal environmental laws are identified in Indian country. These documents are: (1) "EPA Policy for the Administration of Environmental Programs on Indian Reservations" (Ruckelshaus, November 8, 1984); (2) “Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy” (Herman, January 17, 2001); and (3) "Questions and Answers on the Tribal Enforcement Process" (Smith, April 17, 2007). These documents provide advice on how to address facilities in Indian country that are owned or operated by federally-recognized Indian tribes (tribes) and those in which a tribal government has a substantial interest ("tribal facilities"). Facilities in Indian country that are neither owned nor operated by tribal governments are treated the same as similar facilities located outside of Indian country. Because of the unique relationship between the United States and tribes, EPA’s primary goal in addressing noncompliance at "tribal facilities" is prompt return to compliance. EPA generally offers compliance assistance to “tribal facilities” when noncompliance is identified unless such assistance is not appropriate or fails to result in an expeditious return to compliance.

The general policy of providing compliance assistance in the first instance to tribal facilities is not intended to and should not result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the United States. EPA’s goal inside and outside Indian country is to encourage governments, individuals, and businesses to meet their federal environmental obligations. As such, when compliance assistance is offered to tribal facilities and timely return to compliance does not occur, EPA should take the appropriate enforcement action to ensure compliance with the applicable federal environmental

laws. Regions should also refer to the Compliance Incentives activities description in Section III.

EPA retains federal criminal enforcement responsibilities, as these are not delegable. With respect to allegations of criminal violations of federal environmental laws in Indian country and other tribal areas, EPA offices and tribes will provide the EPA Criminal Investigation Division with investigative leads. Such leads will be investigated within the framework of the Office of Criminal Enforcement, Forensics, and Training's (OCEFT) *Policy on Investigative Discretion*.

#### B: Activities, Tools and Support Programs for Core Programs.

The following are the core activities that OECA and the regions should undertake in FY2010. These activities are in addition to ensuring Indian country is covered in other National Priorities and core program areas of the NPM Guidance:

- Report the outputs and outcomes of EPA activities to measure the progress and impact of EPA's tribal enforcement and compliance assurance program. As such, use the tribal flag/identifier in ICIS, CACDS, CCDS or other applicable data system to track and measure all compliance assistance, compliance monitoring, and enforcement activities in Indian country and other tribal areas. See the relevant tracking and measurement discussion in compliance assistance, compliance monitoring, and enforcement section of the NPM Guidance.
- Engage tribes, the Tribal Caucus, Regional Tribal Operations Committees, tribal environmental organizations, and intertribal consortia on compliance assurance and enforcement issues arising in Indian country..
- Review all inspection reports submitted by EPA inspectors and EPA-authorized tribal inspectors and determine whether an enforcement response is appropriate, and if so, what type.

#### **E. Multimedia and Rapid Response Program**

Environmental harm often occurs across air, water and land. The multimedia compliance and enforcement programs foster a comprehensive approach to the resolution of environmental problems because many facilities and companies operate in violation of more than one environmental statute. "Comprehensive" means compliance with the applicable provisions of all environmental laws used to achieve broad-based environmental benefits. A multimedia strategy to target and address compliance problems and environmental harm results in more effective overall management of a facility's or a company's environmental liabilities and is generally more cost-effective than bringing separate media-specific enforcement actions. Multimedia-focused activities, including enforcement actions, reflect the goals of federal innovation and underlie much of the Agency's enforcement reorganization. The Office of Civil Enforcement's (OCE) Special Litigation and Projects Division (SLPD) develops novel

enforcement and compliance incentive approaches to address complex and emerging environmental problems.

The Agency was, and continues to be, successful in developing cases and initiatives that bring significant environmental results in all media. While it remains critical to be able to develop large scale, nationwide actions, capability for more rapid enforcement response is necessary in order to have a truly effective program. The objective of the Rapid Response Program is to “work backwards” from finding an environmental problem to reacting with targeted and streamlined enforcement approaches. The SLPD will work with other Divisions and with the regions to identify cases where streamlined case development and a rapid response can produce significant environmental benefits. EPA anticipates that these actions will be in both administrative and judicial forums, and that EPA will partner with states and tribes in appropriate cases.

In some instances, the SLPD will work with the regions to develop the Agency’s first enforcement response, with more traditional enforcement actions to follow. EPA may streamline cases, so that there are fewer counts against violators in order to obtain speedy resolution, reserving EPA’s right to bring additional actions or additional counts.

The areas that warrant compliance assistance from OECA’s perspective appear in specific program discussions. The primary focus of the federal multimedia program should be on compliance monitoring and enforcement. However, the results of a multimedia analysis of specific facilities or entire companies might prove useful in planning future compliance assistance activities

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

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

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



Participation in Rapid Response Program Activities could entail the dedication and possible reprogramming of compliance monitoring resources with approval from the OECA Planning Council.

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

### ***Regional Enforcement***

Enforcement activities can be described as two different approaches:

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

#### (b) Rapid Response Program

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

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

Participation in Rapid Response Program Activities could entail the dedication and possible reprogramming of compliance monitoring resources with approval from the OECA Planning Council.

## ***Program Oversight***

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

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

### **F. Environmental Justice Program**

Executive Order 12898<sup>4</sup> directs the Environmental Protection Agency (EPA) and other federal agencies to make environmental justice part of their mission, to the greatest extent practicable and permitted by law, by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects on minority and low-income populations.

Consistent with that mandate, the environmental laws that EPA implements and enforces direct it to protect all people from significant environmental hazards and risks. The Agency is keenly aware that minority and/or low-income and other sensitive populations frequently confront special environmental burdens caused by a host of factors including, but not limited to, those relating to: health, environmental conditions, and compliance assurance activities. Helping to satisfy its environmental justice mission to protect all people, including minority and/or low-income populations, EPA accounts for these and other issues under the environmental statutes that it implements and enforces. For example, OECA already explicitly established environmental justice as a targeting factor under the Clean Water Act and the Resource Conservation and Recovery Act<sup>5</sup>. Further, OECA established environmental justice

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<sup>4</sup> “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” Executive Order, February 11, 1994

<sup>5</sup> Memorandum, FR: Assistant Administrator, “Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows,” Section IV, B.2. “Priorities for SSO Enforcement Response” (April 27, 2000) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns). <<http://www.epa.gov/compliance/resources/policies/civil/cwa/strat312.pdf>>;

Guidance on the Use of Section 7003 of RCRA, § II, Bullet 1 (October 1997) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns).

as a penalty consideration<sup>6</sup> and as a factor in approving Supplemental Environmental Projects in settlements.<sup>7</sup> Additionally, each implementation strategy developed for an OECA national priority should include an element on environmental justice to ensure that minority and/or low-income groups and communities are not disproportionately placed at risk from environmental and/or human health threats.

Each Program and Regional Office is directed to develop Environmental Justice Action Plans. These documents are prospective planning tools that identify measurable commitments to address key environmental justice priorities. These strategic planning documents coordinate the environmental justice activities of the Agency and establish a basis for accountability and monitoring progress. In 2004, OECA issued its Environmental Justice (EJ) Policy which further underscores the importance of environmental justice in program implementation and encourage that environmental justice be integrated fully into OECA's planning and budgeting processes.

The EJ Executive Steering Committee directed that the Action Plans should:

1. Follow EPA's current Strategic Plan architecture to enhance the alignment of the Agency's environmental justice activities with its overall planning and budgeting processes; and
2. Include, as objectives to be addressed through the Action Plans: (a) areas of focus for each of the Regional or Headquarters Offices (*e.g.*, Regional or Headquarters Program Office priorities); and (b) as applicable, the eight (8) specific national environmental justice priorities, as later identified in the EPA Administrator's memorandum of November 4, 2005. These national environmental justice priorities were identified as critical issues of nation-wide concern and are also addressed in the Agency's FY 2006 - 2011 Strategic Plan of particular significance to OECA is ensuring compliance, which falls under Goal 5.<sup>8</sup>

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<http://www.epa.gov/compliance/resources/policies/cleanup/rcra/971020.pdf>

<sup>6</sup> See Memorandum from Steven Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance (September 30, 1997).

<sup>7</sup> See, *e.g.*, Environmental Protection Agency, Supplemental Environmental Projects Policy 13-14 (May 1, 1998).

<sup>8</sup> The eight national environmental justice priorities are listed below as "objectives" under the relevant EPA Strategic Plan goal. The ninth objective, "Cross Cutting Strategies," is one of the national environmental justice priorities, and should be included as one of the areas of focus for the program and regional offices.

Goal 1: Clean Air and Global Climate Change

Objective 1: Reduction in number of asthma attacks

Objective 2: Reduce exposure to air toxics

Goal 2: Clean and Safe Water

Objective 1: Safe fish/shellfish

Objective 2: Clean and safe drinking water

Goal 4: Healthy Communities and Ecosystems

Objective 1: Reducing elevated blood lead levels

Objective 2: Collaborative problem-solving to address environmental justice issues

Objective 3: Revitalization of brownfields and contaminated sites

For 2010, building on the progress made with the FY 2009-2010 EJ Action Plans, the desired outcomes of the EJ Action Plans include (1) better integration and alignment with the Agency planning process and (2) more results-oriented activities with corresponding environmental and public health measures. As described above, the EJ Action Plan activities should be based on areas of focus for each of the Regional or Headquarters Offices (e.g., Regional or Headquarters Program Office priorities) as outlined by planning documents (e.g. the NPM Guidance); and as applicable, the eight (8) specific national environmental justice priorities. Activities in the EJ Action Plan should continue to have specific outputs and concrete, measurable environmental and human health improvements. During FY 2009, OECA began measuring the environmental and human health improvements for one to two of these activities. Finally, the activities in the EJ Action Plans should demonstrate, where possible, how EJ activities support Agency efforts to achieve annual and longer-term goals in EPA's FY 2010 Annual Plan and Budget and 2009-2014 Strategic Plan.

In order to more fully implement this direction, EPA has aligned the development of the EJ Action Plans with the development of the NPM Guidance. The development or identification of activities for the EJ Action Plans should occur concurrently with the development of the priorities and strategies of the NPM Guidance.

EPA has recognized the need to more effectively define, measure, and communicate how EPA's programs and actions result in environmental and public health benefits to minority and/or income communities who frequently may be exposed disproportionately to environmental harms and risk. The EJ Executive Steering Committee has agreed that this is an important effort. As a result, OECA, with the support of OEJ, initiated an effort to examine ways to capture and recognize the EJ benefits of EPA's programs and actions, including the development of baselines from which to measure.

In 2008, OECA continued to test its Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT). The goal of EJSEAT was to identify a tool which could provide OECA and the Regional enforcement programs with a functional way to identify potential environmental justice areas of concern ("potential EJACs") at the Census-tract level. Pending the outcome of the testing in FY 2008, this tool or a revised tool may be identified for purposes of consistently reporting EJ-related activities. In addition, depending on the outcomes from the EJSEAT testing, OECA and the Regions may consider the use of EJSEAT to support the development of performance measures and reporting of progress for commitments identified in their FY 2009-2010 EJ Action Plans. The goal is to establish a basis for measuring results achieved through compliance assistance, compliance incentives, and

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Goal 5: Compliance and Environmental Stewardship  
Objective: Ensuring compliance

Goal: Cross Cutting Strategies  
Objective: Internal Capacity-Building (e.g., training, internal program management)

In addition, each region and, to the extent applicable, program office should also address issues arising under Goal 3, Land Preservation and Restoration, of the EPA Strategic Plan.

monitoring and enforcement in communities that may be exposed to disproportionate environmental harms and risks, including minority and/or low-income communities.

Regions should appropriately target compliance assistance activities to address issues of environmental justice, consistent with smart enforcement principles, OECA's EJ policy, the Regional EJ Action Plans, and the EJ component of the implementation performance-based strategies for the national priorities. Prior to planning and targeting compliance assistance activities, among other things, regions should consider the following: (1) does the activity impact compliance with statutes that protect public health and the environment; (2) has the region sought and has there been sufficient public input regarding the compliance assistance activity; (3) should other levels of government, including tribal government, be involved with the activity or consulted; (4) is consultation with tribal governments appropriate, and if so, at what level; (5) how have health, environmental, social demographic, and compliance data sources been evaluated to determine priorities; (6) have priorities been established to ensure that disproportionately impacted areas are being protected; and (7) have issues of Limited English Proficiency among minority populations and low-income populations or the regulated community been considered and addressed. Compliance assistance activities should be targeted to diminish risk relative to noncompliance problems and the conditions and health of the resident population.

Regions should appropriately target compliance monitoring activities to address issues of environmental justice, consistent with smart enforcement principles, OECA's EJ policy, the Regional EJ Action Plans, and the EJ component of the implementation performance-based strategies for the national priorities. Prior to planning and targeting inspections, among other things, regions should consider the following: (1) does the monitoring activity impact enforcement of statutes that protect public health and the environment; (2) has the region sought and has there been sufficient public input regarding compliance assurance activities; (3) should other levels of government, including tribal government, be involved with the activity or consulted; (4) how have health, environmental, and compliance assurance activity data sources been evaluated to determine priorities; (5) have priorities been established to ensure that disproportionately impacted areas are being protected; and (6) have differential patterns of consumption of natural resources among minority populations and low-income populations been identified. Inspections should be targeted to diminish risk relative to noncompliance problems and the conditions and health of the resident population.

### ***Performance Expectations***

To ensure that the goals of environmental justice are accomplished, enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement/compliance activities. Moreover, enforcement/compliance activities addressing issues of environmental justice should be included in the region's Environmental Justice Action Plans and identified in annual commitments as having measurable environmental justice components. The Strategy Implementation Teams (SITs) for the national priorities should include in their performance-based strategies activities with measurable results that show how they are incorporating an environmental justice component in their strategies. To address environmental justice concerns, regions should ensure that:

- 1) The public has access to compliance and enforcement documents and data, particularly in high risk communities, through multimedia data integration projects, other studies, and communication/outreach activities;
- 2) Public input is solicited and considered, as appropriate, in the identification of facilities or areas of concern (*i.e.*, through periodic listening sessions, hotlines, outreach efforts, etc...) and-during other appropriate phases of the compliance assurance and decision-making processes;
- 3) Consultation with tribal governments is conducted consistent with Executive Order 13175: "Consultation and Coordination with Indian Tribal Governments" (November 2000) and the EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 1984)
- 4) EPA's policies, programs and activities, including public meetings, address the concerns of the potentially affected populations, including those living in minority and/or low-income areas and tribal communities;
- 5) Noncompliance is deterred and environmental and human health improvements are achieved by: (a) maintaining a strong, timely and active enforcement presence across all areas, including those with minority and/or low-income populations, and (b) targeting compliance activities in areas with high levels of noncompliance;
- 6) Enforcement and other compliance assurance actions are prioritized using environmental, compliance, and health data so as to minimize risk to human health and the environment and to maximize compliance, consistent with the goals of smart enforcement;
- 7) When possible, enforcement actions result in environmental or human health improvements, through pollution reductions and/or physical or management process changes;
- 8) When practical, participate in collaborative problem solving with other federal, state, tribal, and/or local agencies to address environmental justice concerns; participate in the environmental justice training efforts; and continue to participate in national, state, tribal, or local dialogue around the issue of environmental justice (*i.e.*, NEJAC, listening sessions, etc...);
- 9) Consider issues such as cumulative risk, health disparities, and appropriate demographic issues in the context of gravity based penalties, case development, referrals to the Department of Justice, and Supplemental Environmental Projects; and
- 10) Environmental justice-related activities should be reported to the appropriate tracking mechanisms and corresponding databases (e.g., Environmental Justice Progress reports, Case Conclusion Data Sheets, etc.)

## ***Regional Enforcement***

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

## ***Program Leadership and Evaluation***

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

OECA is committed to regularly assessing the effectiveness of our programs. Regular program evaluation is the best way to assure continuous program improvement and desired program performance. On September 18, 2006, EPA's Office of Inspector General issued a final evaluation report entitled *EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities*. The report observes that, "No Agency-wide guidance exists on environmental justice program or policy review." EPA has come to realize that a more systematic, broader-scale approach is needed to identifying and addressing disproportionate impacts to human health and the environment. Over the coming year, OECA and the regional offices will conduct an environmental justice review to identify whether the Agency is effectively identifying and addressing EJ concerns that arise or may arise with respect to that program, policy, or activity; and/or identify opportunities for the Agency to enhance its effectiveness in identifying and addressing EJ concerns that arise or may arise with respect to that program, policy, or activity. In FY09, OEJ will work with the Headquarter (HQ) Program Offices and Regions as they implement their EJ Reviews providing technical assistance, training support, and individual consultation to help in the design and implementation of the EJ Reviews. The EJ Reviews will help EPA to better integrate EJ considerations into the Agency's decision-making processes and will provide more accurate benchmarks and measures to gauge EPA's progress in identifying and addressing EJ issues.

## **G. Technical Support and Training**

### 1. NETI

The National Enforcement Training Institute (NETI) is committed to the continuing assessment of emerging training needs, strengthening its role as a clearinghouse for training information within the enforcement and compliance assurance program, exploring cost effective means of delivering both classroom and distance training, and working with regions and HQ offices to develop a strategic approach to enforcement and compliance assurance training. NETI also continues its role as developer, coordinator, publisher, and trainer for

federal, state, local and tribal attorneys, inspectors, civil and criminal investigators and technical experts in all the various tools for environmental compliance and enforcement.

NETI utilizes the Enforcement and Compliance Assurance Senior Training Council, and instituted the Enforcement Training Network, a group of key players from the regions and OECA, to effectively manage training and continuous learning in the program. Better exchange of information and reporting about training activities in the enforcement and compliance program promotes efficiencies, opportunities and reliability. This network also discusses and evaluates training needs and develops mechanisms to communicate about current and future training needs. All regions and OECA offices participate in the Network which has the following charge for legal and non-legal training interests:

- serve as a voice, advocate, and source of expertise on enforcement and compliance training for OECA;
- have direct access to senior leadership on training matters;
- coordinate and report requested training information from their office to OECA;
- participate in regular training meetings/conference calls; and
- assist in planning and holding enforcement and compliance training events.

In 2010, regions are asked to support this network in the following ways:

- Assist regional representatives in identifying training needs and carrying out other informal information surveys for the network and the parallel legal training network
- Announce courses offered by the region on NETI's website <http://www.epa.gov/compliance/training/neti/index.html>, especially courses open to other regions' attendance;
- Work with NETI staff to ensure the accuracy and quality of data reporting for training activities (see below).
  - National Training Plan (NTP): This plan, initiated in FY 2009, is designed to link training with strategic goals, national priorities and key elements of the core programs. Managers and staff are encouraged to use the data in the Plan when planning training investments as well as when preparing Individual Development Plans. Other possible uses include searching the National Training Plan to look for an event that covers a subject area where staff needs development -- contact the course leader, inquire about borrowing materials and then hold a similar training event in your office, or negotiate with the provider to bring the course to you.

A call letter will be sent to regions and OECA offices in early FY 2010 requesting that plans for delivering existing training and developing new training products for FY 2010 (based on resource commitments known or expected at the time of the submission) be entered into the National Training Plan database.



NETI will consolidate plan submissions and develop recommendations on potential gaps, duplication or overlaps to be addressed. The National Training Plan will be distributed to all offices to facilitate sharing products and resources across offices.

Throughout the year, the NTP database should be updated as additional training is planned. When creating or revising training products, please consider integrating overarching policies, such as environmental justice and coordination between the civil and criminal programs. Also please consider the updated inspector training requirements in EPA Order 3500.1.

- Mid-Year and End-of-Year Statistics: Regions and OECA offices are encouraged to provide timely and accurate mid-year and end-of-year reports of compliance and enforcement training activities through the national data reporting process. Training data are compiled into an annual Training Accomplishments Report (available from <http://cfpub.epa.gov/compliance/resources/reports/accomplishment/details.cfm>), and are analyzed in order to inform needs assessments, strategic planning, and project development.
- End-of-Year Evaluation Forms: A new requirement, begun in FY 2009, is the use of a standard evaluation form for training events. By reporting and measuring outcomes of training, we will have information by which to evaluate the effectiveness of courses, and thereby motivate behavior changes and improve performance among trainers and trained personnel. The representatives on the Enforcement Training Network will have copies of the NETI Standard Evaluation Form which is to be used for all training events.

## 2. NEIC

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

### **H. EPA/State Relations**

OECA has worked closely with EPA regions, the Environmental Council of States (ECOS), state media associations, and other state representatives to jointly develop a framework and process for conducting reviews of core enforcement in the CWA-NPDES, RCRA Subtitle C and the CAA Stationary Sources programs. The goals of the reviews are to promote consistent levels of activity in state and regional enforcement programs, consistent

oversight of state and regional enforcement programs, and consistent levels of environmental protection across the country. A first round of reviews of all states and territories were completed in 2007. In FY2008, OECA worked with its partners to evaluate the first full cycle of SRF implementation and revised the SRF guidance. Round 2 was initiated in September of 2008. In FY2010, regions are expected to continue Round 2 by implementing their plan for the second round of reviews. Changes in schedules should be discussed with OECA.

The elements, criteria and protocols of the SRF are consistent with the 1986 “Revised Policy Framework for State/EPA Enforcement Agreements” and the media-specific enforcement response policies, compliance monitoring strategies and penalty policies. These reviews constitute the primary mechanism by which regional oversight of state enforcement programs should be carried out in the three media programs. These reviews should be an integral part of the regional/state planning process. State/regional commitments to implement significant recommendations for program improvements should be captured and tracked in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the region and the state, and those parties held accountable for carrying out those commitments. Regions that have states submit proposals under Element 13 should consult with OECA on whether or not credit can be granted.

Draft and final reports, which should include Preliminary Data Analysis and file reviews, recommendations, state comments, and benefits arising from Framework reviews, including Element 13, should be entered by the region in the Lotus Notes SRF Tracker database upon completion of a review. The Tracker will continue to be tracked and managed by OECA on an ongoing basis.

### Grants Management

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

### Standardized Template for State Grant Agreements

In order to improve program effectiveness and enhance accountability, OMB requires EPA to develop a standardized template for states to report and submit the results from state grant agreements. This request only covers continuing environmental grants, not project grants. To address the OMB requirement the Office of the Chief Financial Officer, the Office of Congressional and Intergovernmental Relations, and the Office of Grants and Debarment convened a workgroup to develop such a template. Final guidance on state grant templates appears on the following web site: <http://www.epa.gov/ocfo/npmguidance/template.htm>.

The OECA grants covered by this requirement are: FIFRA Pesticide Enforcement Grants, and the TSCA Compliance Monitoring Grant. The TSCA Compliance Monitoring Grant is used to fund the TSCA Asbestos, TSCA PCB and TSCA Lead compliance monitoring and enforcement programs (see Attachment C). The templates include performance measures for the respective grants, and demonstrate the linkage between activities funded by the grant and the Agency Strategic Plan. These templates must be included in all state grant agreements in FY 2010. It is expected that most of the data for the grant template measures will be reported into the Annual Commitment System. The grant templates use existing measures. States are expected to maintain all other data flows required by the programs in order to maintain good program management.

### Innovative Programs

Innovative programs continue to be important to the compliance and enforcement program. Regions, states, and tribes are encouraged to consider implementation of innovative projects for the 2010 planning cycle. EPA's Innovation Action Council (IAC) endorsed three priority innovations for "scale-up," (i.e., full scale implementation) and recommended integration into OECA's NPM Guidance. These priority innovations are: the National Performance Track Program, Environmental Management Systems (EMS), and the Environmental Results Program (ERP). Details on these innovations are available at <http://www.epa.gov/innovation>. Regions, states, and tribes are encouraged to use these innovative approaches in the achievement of their program goals. OECA works closely with the Office of Policy, Economics, and Innovations on one of the Agency-wide programs, the National Environmental Performance Track Program (Performance Track). When participating in Performance Track (PT), regions should be aware of three relevant guidance memos: "Enforcement and Compliance Operating Principles for the National Performance Track Program," January 19, 2001, "National Environmental Performance Track Program," April 23, 2002, and "National Environmental Performance Track Program," October 29, 2003. In support of PT, the regions, states, and tribes (in concert with headquarters offices and DOJ) are expected to conduct comprehensive compliance screens of all applicant facilities. The regional effort includes searches of Agency databases, follow-up on information found, program by program inquiries about new information not yet accessible in databases, and coordination with state and tribal partners to the fullest extent possible. The region will assess the findings against the PT entry criteria, and make recommendations as to the appropriateness of each facility's participation.

One of the incentives offered through PT is the Agency's commitment to consider all participating facilities as "low priority for routine inspections." Regions should incorporate

these commitments in inspection targeting efforts, both in the context of regional targeting and planning agreements with OECA and to the extent possible in negotiating with state and tribal partners in their performance agreements and work plans. “Low priority for routine inspections” should not be interpreted to mean that regions should not inspect PT facilities. OECA advises that regions consider a one-year extension to traditional inspection coverage goals when dealing with Performance Track facilities. A list of the PT facilities in each region that are eligible for a low-inspection priority is available from the Regional PT Coordinator.

## **SECTION VI. FY2010 OECA WORKPLAN SUBMISSION INSTRUCTIONS**

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

Following release of the final OECA NPM Guidance, regions should continue discussions with states and tribes to determine draft numbers for the commitments contained in the guidance. Current schedules call for regions to enter their draft targets into the annual commitment system by July 10, 2009. Headquarters and the regions will have approximately 2 months (July 10 through September 25) to resolve any issues and finalize annual regional targets. During this same time, regions will engage states and tribes in negotiations to complete the grant process (PPAs, PPGs, and Categorical Grants), including translating regional targets into formal commitments supported by state-by-state agreements. All commitments should be final by September 25, 2009.

The lead time before annual targets and commitments are final provides regions, states, and tribes maximum flexibility in determining commitments. Ultimately, headquarters and regions share responsibility for identifying and resolving conflicts over program priorities that present implications for the annual regional commitments. Issues not resolved by September 25, 2009 will be elevated to OECA's Acting Assistant Administrator for decision.

### **B. FTE Resource Charts**

The regions will complete FTE charts similar to the charts completed in previous planning cycles. Charts organize FTE information by goal, objective, and sub-objective, and then cross-walk to the media program elements. The importance of the FTE Resource Charts is significant due to increased interest from the Office of Management and Budget, the Inspector General, and Congress. Regions will receive FTE templates in August 2009. It is imperative that regions complete these charts and submit these documents to Christopher Knopes and Lisa Raymer on September 30, 2009.

- 2009 Final – Enter the region's final FTE allocation for FY2009 in the 2008 Final column.
- 2010 Proposed – Enter the region's proposed FTE allocation for FY2010 in the 2010 Proposed column. Headquarters recognizes that FTE levels may change after the Agency receives the FY2010 enacted budget after October 1, 2009. Therefore this number is a "best guess" estimate.