

**FY 2000/2001 OECA  
Memorandum of  
Agreement (MOA)  
Guidance**

April 1999 Final Guidance

April 14, 1999

**MEMORANDUM**

**SUBJECT:** Final FY 2000/2001 Office of Enforcement and Compliance Assurance Memorandum of Agreement Guidance

**FROM:** Steven A. Herman /s/  
Assistant Administrator

**TO:** Regional Administrators  
State Environmental Commissioners

This memorandum provides you with the final FY 2000/2001 Office of Enforcement and Compliance Assurance (OECA) Memorandum of Agreement (MOA) Guidance, which sets forth program direction and priorities for the national enforcement and compliance program for the next two years. This guidance was developed in consultation with other national program managers, regions, states, tribes, and state/local associations. We are sending the guidance directly to state commissioners and state associations, and regional offices should forward the guidance to their state offices and other stakeholders within their region. The document reflects our establishment of risk-based priorities to address serious compliance problems and support accomplishment of our national environmental priorities. It provides a framework for leveraging the work of state and federal personnel to accomplish these mutual goals. I strongly encourage regions and states to use this document as the basis for joint work planning.

Thank you for your continued support in developing this guidance. I particularly appreciate the amount of time and effort which you and your staff have taken both to help us identify the priorities and in subsequent review and comment on the guidance. OECA is committed to continue improving the involvement of all parties in developing priorities. We took several steps this year that included additional state involvement in initial thinking and advance review of the guidance prior to distributing it for comment. We welcome suggestions for further involvement. This final document does reflect adjustments based on these comments. You will also note that formatting changes have been made which we hope will make the document easier to read and understand. A condensed response to comments document will be sent out under separate cover in the near future.

As you are aware, the draft guidance contained significant changes from last year to improve the guidance, by reducing the number of national priorities, linking strategic and annual planning, and better measuring results. The final attached guidance also reflects these changes. There are two

changes, in particular, that I want to bring to your attention in the final guidance. First, the proposed measures list has been removed from the guidance and will be provided by the end of May as a separate addendum. This addendum will contain a complete, consolidated set of measures aligned under the EPA Strategic Plan, which have been fully coordinated with existing RECAP and NPMS measures. Second, selection of specific program areas and development of management reports for the revamped regional evaluation program are still ongoing. A separate memorandum will be issued on the specific areas for review and initiation of a Headquarters-regional workgroup.

**Regional MOAs are due to Headquarters by September 1, 1999.** The submission date for Regional MOAs has been revised from August 2, 1999, the date identified in the draft MOA guidance, to September 1, 1999, to match the Agency's schedule. This should also accommodate extensions requested by some regions to allow them sufficient time to complete negotiations with states regarding state priorities, activities and commitments.

When submitting your MOA, please provide a hard copy to John Neylan, Chief, Planning Branch, Enforcement Planning, Targeting and Data Division, Office of Compliance, mail code 2222A. Please also submit an electronic version in addition to the hard copy [Neylan.John@epamail.epa.gov]. If you have any questions regarding the MOA guidance itself or in developing your regional MOA, please contact John Neylan at 202/564-5033.

#### Attachments

cc: Assistant Administrators  
Deputy Regional Administrators  
Chairman, Tribal Operations Committee  
OECA Office Directors  
Regional Enforcement Division Directors  
Regional Counsels  
Regional Enforcement Coordinators  
State Associations  
U.S. Department of Justice  
Regional MOA Coordinators

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## INTRODUCTION

### *PURPOSE OF GUIDANCE*

The Office of Enforcement and Compliance Assurance (OECA) Memorandum of Agreement (MOA) guidance sets forth the goals, priorities, and activities for the national environmental enforcement and compliance program for FY 2000/2001. This guidance is the basis for development of individual agreements between OECA and each region identifying overall program direction and specific activities and expected results. Regional MOA submissions are due to Headquarters by September 1, 1999. To strengthen the link between the strategic plan and the MOA in FY 2000/2001 the MOA should be structured around Goals 9 and 7 of the Agency's Strategic Plan (see Attachment 1). Goal 5, which includes Superfund enforcement activities will not be covered in this document but will be addressed through the Superfund Comprehensive Action Plan (SCAP) process, as in the past.<sup>1</sup> The MOA, Agency Strategic Plan, and the Annual Plan/budget (see Attachment 2, which also includes the FY 2000 State Accountability Measures) are now organized to synchronize program direction and enhance our ability to report program results as required by the Government Performance and Results Act (GPRA).

### **States and EPA Partner on Environmental Protection: State Activities an Integral Part**

*STATES'<sup>2</sup> ROLE* States play a crucial role in the implementation of the national environmental enforcement and compliance assurance program. Through joint planning between regions and states, governmental resources can be fully leveraged and duplication avoided. Regions should therefore develop their priorities in partnership with their states by sharing information about compliance trends, negotiating work sharing agreements under existing frameworks, and undertaking joint activities in cooperation with state agencies. To make this process fully effective, it is helpful to have information on state priorities. States are not required to adopt EPA's national priorities. This guidance provides flexibility for both regions and states to identify and implement their own priorities. We do anticipate that through joint planning between regions and states, national priorities and the core enforcement and compliance assurance program will be effectively addressed.

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

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

**What is a Priority?**

The identification of a program area or sector as a national priority means that it takes precedence over core program activities, except under a limited number of circumstances. Thus, with justification, regions may trade off core program activities to support national priorities. Note that exceptions to this general rule exist where base programs cannot be delegated to the states, are very small in scope (Mobile Sources, Toxic Substance Control Act (TSCA), Wetlands, the Oil Pollution Act and CFCs) or areas where regional and state analysis suggests that serious noncompliance with core program requirements exists. Regions will be expected to support national priorities unless there is substantial justification for the region's nonparticipation. While Headquarters requests stakeholders to focus attention on top national priorities, it explicitly recognizes the need for and importance of regional and state priorities, and the need to provide the resource flexibility to implement those priorities. (See Attachment 3 for specific regional MOA format instructions.)

**FY 2000/2001 NATIONAL PRIORITIES**

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

**OVERVIEW**

The EPA Strategic Plan, issued in September 1997, stated the Agency mission: to protect human health and to safeguard the natural environment—air, water, and land—upon which life depends. To fulfill this mission, the plan identified ten goals. Two of these goals, Goals 9 and 7, are specifically addressed in the OECA MOA process. Goal 9 is the primary enforcement and compliance goal and calls for the Agency to provide a “credible deterrent to pollution and greater compliance with the law”. Goal 7 requires the “expansion of Americans’ right to know about their environment” through easy access to information about the state of their local environment. This goal covers the national enforcement and compliance program efforts in the areas of public access and environmental justice. Taking into consideration, then, Agency Goals 9 and 7, this guidance identifies the priorities for FY2000/2001 that can move the national enforcement and compliance assurance program towards achieving these goals. Each priority includes a rationale for its inclusion, performance expectations, and timeframes. Regions are asked to address

these expectations in the regional writeup for each national priority. Specific projections may be required for some activities.

**Compliance and Enforcement Program Strives to Measure Progress Using Innovative Methods**

**MEASURING  
PROGRESS**

OECA recognizes the importance of well developed measures which go beyond traditional enforcement outputs and measure actual outcome e.g., the environmental impact of an enforcement action or the compliance status of the regulated community. OECA's National Performance Measures Strategy (NPMS) moves the enforcement and compliance program in the direction of using more outcome measures. Implementation of the NPMS measures is occurring in two phases. The first phase was initiated through a March 3, 1999 memorandum from Steven Herman which called for implementation of selected measures in the third quarter of FY 99. The second phase will occur at the beginning of FY 2000, when the remaining measures will be implemented. Additionally, OECA has begun the process of reviewing proposed measures for MOA priorities and sector strategies. This review will determine which of these proposed measures are included in existing data reporting requirements or within development of the NPMS measures; and evaluate whether any new measures proposed for priorities or sectors should be implemented. Since this process is not yet complete, a separate Addendum will be disseminated as part of this guidance (May, 1999) which will include a list of measures and other management information which is likely to be used in FY 2000/2001 to report on national performance, as well as to evaluate regional performance, organized by goal and objective. This list will include:

- 1) Measures which will be used to manage and report on the performance of the national enforcement and compliance program, and includes all measures identified in NPMS, the FY 2000 Annual Plan, and the state accountability measures identified through NEPPS;
- 2) MOA priority or sector specific measures; and
- 3) Other management information which has been traditionally used to evaluate regional performance.

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

**GOAL 9**

Protecting the public and the environment from risks posed by violations of environmental requirements is, and always has been, basic to EPA's mission. A strong enforcement and compliance program achieves environmental protection by identifying noncompliance problems, punishing violators and deterring future violations, while ensuring a level playing field for law abiding companies. Through its credible deterrent goal, EPA seeks to ensure full compliance with laws intended to protect health and the environment. Within the framework of this goal, our objectives

are as follows:

*Objective 1:* Identify and reduce significant non-compliance in high priority program areas, while maintaining a strong enforcement presence in all regulatory program areas.

*Objective 2:* Promote the regulated communities' voluntary compliance with environmental requirements through compliance incentives and assistance programs.

EPA's strong and aggressive enforcement and compliance program has been the centerpiece of efforts to ensure compliance, and has achieved significant improvements in public health and the environment. Given the scope of responsibilities, the growing complexity of problems and solutions, and the large and diverse universe of private, public, and Federal facilities regulated under the various statutes, the challenge is to achieve continuous improvement in compliance. To address environmental problems and the associated risk, the Agency also will work to maximize its effectiveness by strategically targeting its enforcement and compliance activities to address the most significant risks to human health and the environment and to address disproportionate burden on any populations.

EPA must continue to use and develop a broader range of solutions to non-compliance. To this end, EPA is developing additional tools and capabilities for ensuring compliance through assistance and incentives to the regulated community. Through increasing communication with the regulated community, EPA will be in a position to identify incentives and promote the benefits of our auditing policies, compliance assistance tools and voluntary environmental management systems programs.

State governments bear much of the responsibility for ensuring compliance with environmental laws and regulations, and EPA will work with them and other agencies to promote environmental protection. Further, EPA will cooperate with other nations to enforce and ensure compliance with international agreements affecting the environment. These activities also ensure a level economic playing field in an increasingly market-based trading system.

The following discussion provides the priority activity, selection rationale, and performance expectations and timeframes for each national priority in support of Goal 9.

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

CWA--WET  
WEATHER

*Priority Activity:* Implement programs to ensure compliance in the following wet weather areas: the Combined Sewer Overflow (CSO) Policy, the Sanitary Sewer Overflow (SSO) Enforcement Management System, the National Concentrated Animal Feeding Operations (CAFOs) Sector Strategy (including the CAFO Implementation Plan), and Storm Water regulations.

*Selection Rationale:* Run-off from wet weather events (i.e., overflows from combined sewers or sanitary sewers, CAFO discharges and run-off, and storm water run-off ) remains a leading cause of water quality impairment as documented in Section 305(b) reports and represents a significant threat to public health. Sewer overflows contain bacteria and other pathogens which cause illnesses and lead to beach and shellfish bed closures. CAFOs pose a number of risks to water quality and public health because of the amount of animal manure discharges and runoff generated, particularly as a result of storm events. Efforts to control wet weather flows have been underway for several years and, while there are areas where regulatory development and/or consultation with the Federal advisory group are still ongoing, there are areas which are ripe for compliance assistance, compliance monitoring, and/or enforcement due to the passage of deadlines or the issuance of new policies. All four of these wet weather program areas are addressed in the President's "Clean Water Action Plan". This action plan includes a number of commitments to direct compliance and enforcement efforts at regulated facilities contributing to the impairment of watersheds, shellfish bed closures, beach closures, and drinking water sources, and implementation will be well underway in FY 2000/2001. Headquarters and regions are currently working on an approach to assess progress at the end of each fiscal year and identify all compliance monitoring, compliance assistance, and enforcement activities that support the goals of the President's "Clean Water Action Plan."

*Performance Expectations For the Wet Weather Priority Areas:*

**Combined Sewer Overflows--** Regions which have CSOs were to ensure that all CSO dischargers, including Federal facilities, implement the nine minimum controls by January, 1997, as outlined in the CSO policy. This requirement was to be included in NPDES permits or incorporated in enforcement actions. A May 19, 1998 memorandum, "Implementation of the CSO Control Policy," from Bob Perciasepe and Steve Herman to the regions emphasized the need to track the implementation of the CSO policy. Each region should provide in their MOA submittal the following information: 1) names or permit number of CSO dischargers that have implemented the nine minimum controls and that have implemented, or are on a schedule to implement, a long term control plan as well as the mechanism used (e.g. permit requirements, enforcement action); 2) a plan for addressing CSO dischargers not in compliance with

the CSO policy and 3) plans to verify that schedules are being met or that controls are being implemented as stated in either the permit or enforcement order compliance schedule.

**Sanitary Sewer Overflows--** Where they have not already done so, regions with SSOs should: (a) continue to identify the universe of SSOs by targeting inspections at likely SSOs, including Federal facilities (by name); (b) continue to assess the magnitude of the overflows in their region; (c) target known dischargers with SSOs, especially those in priority watersheds or in areas where the receiving waters are impaired (e.g. shellfish bed closures, beach closures, fish advisories, or drinking water sources) and/or in environmental justice areas, ensuring that a minimum of 20% of the systems will be addressed each year; and indicate when they utilize the collection system management and operation and maintenance (MOM) guidance; (d) issue administrative orders, file judicial actions, and/or provide compliance assistance to the community as appropriate. Regions should plan to report in their MOA end-of-year report the number of SSOs addressed each FY and how each SSO was addressed, per guidance provided in Chapter X of EPA's "Enforcement Management System" (e.g., Notice of Violation (NOV), Administrative Order, judicial action).

**Concentrated Animal Feeding Operations--** Regions are expected to continue to work closely with their states to implement the national CAFO sector strategy. The strategy requires states to develop compliance monitoring and enforcement strategies/plans (due in October 1998) which take into account existing state programs, state priorities as well as Federal priorities, and sets forth criteria for risk based targeting. The state strategies should outline the elements of their enforcement program, including state regulatory authority, targeting, inspections, compliance assistance, complaint handling, and subsequent enforcement action options. In addition to continuing to help implement and update, as necessary, state plans (or regional plans for non-delegated states), regions should work with states to get CAFOs currently required to have permits permitted under NPDES and identify the following by state: total number of CAFOs and number of CAFOs in priority areas (as discussed in the March 5, 1998 Compliance Assurance Plan for CAFOs) and should track percent of total CAFOs inspected, and percent of CAFOs in priority areas inspected. CAFO inspections and enforcement should be targeted at priority watersheds, impaired waters, and/or where there is a threat to a surface water or ground water drinking water source. Regions, working with their states should identify the universe ((including Federal facilities,) if any and inspect 100% of all CAFOs in priority areas by FY 2001, ensure that all other CAFOs are inspected by FY 2003, and take follow-up enforcement actions as appropriate. The state strategies also need to address the use of compliance assistance. The strategies should address how states will work with the U.S. Department of Agriculture, State Departments of Agriculture, national, state, and local trade and produce associations and organizations, soil and water conservation districts, and community and environmental groups. Regions should coordinate compliance assistance activity with the Agriculture Compliance Assistance Center.

**Storm water--** Because there is such a potentially large number of storm water dischargers, including Federal facilities, regions will need to strategically target compliance monitoring, compliance assistance, and enforcement activities in this area. In general, regions should address CSOs and SSOs before turning to major storm water initiatives. Regions should focus storm water inspections and enforcement where there is water quality degradation and/or a threat to public health. Priority should be given to storm water problems associated with the other OECA MOA priorities (e.g. CAFOs) and storm water dischargers to priority watersheds and/or impaired waters (e.g., discharge contributing to impairment of a drinking water source, issuance of a fish advisory, beach closure, or shellfish bed closure).

*Timeframes:* Actions will be taken throughout FY 2000/2001. Regions will be expected to assess progress at the end of each fiscal year and identify activities that support the goals of the President's "Clean Water Action Plan."

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

**MICROBIAL  
RULES**

*Priority Activity:* Enforcement and compliance assistance to ensure compliance with microbial regulations and to support the President's Clean Water Action Plan. OECA will be seeking input from the Regions and from drinking water stakeholders to develop a strategy to implement the enforcement and compliance recommendations of the calendar year 1996 and 1997 annual National Public Water System Compliance Reports, and how activities to support implementation can be incorporated into each Region's MOA. Several of these recommendations concern improving compliance with microbial regulations.

*Selection Rationale:* Contaminated drinking water is a direct threat to human health. The effects of contaminated drinking water can be severe, especially on children, the elderly, and persons with compromised immune systems. Adverse health effects of microbiological contamination include gastrointestinal distress, fever, pneumonia, dehydration (which can be life threatening), or death. Serious effects were seen in the Milwaukee outbreak of cryptosporidium that was responsible for symptoms in over 400,000 persons, 4,000 hospitalizations, and over 100 deaths. Last summer, in Austin, TX, contamination of drinking water wells infected over 1,300 persons. From 1971 to 1983, there were 427 reported outbreaks with over 100,000 cases of waterborne disease and the Centers for Disease Control believes that there are more cases than reported, as mild cases are often mistaken as the flu.

The drinking water regulations that deal with microbial contamination are the Total

Coliform Rule (TCR) and the 1989 Surface Water Treatment Rule (SWTR). These rules have been in effect for a number of years and there has been and continues to be substantial outreach and compliance assistance as well as enforcement activity in these areas. However, due to the high levels of noncompliance and the direct public health effects of violations, the microbial regulations remain a high priority for OECA. In addition, the President's "Clean Water Action Plan" includes an OECA commitment to increase enforcement and compliance assistance activities in watersheds where sources of drinking water are contaminated or threatened.

*Performance Expectations for SDWA Microbial Rules:*

Regions are expected to address with either an enforcement action or targeted compliance monitoring or compliance assistance all public water systems, including Federal facilities and tribally owned or operated systems, which become significant non-compliers for the TCR. Under the SWTR, the focus nationally has been on insuring that systems which are unfiltered and are required to filter are on enforceable schedules. This focus will shift as the majority of these systems are now on schedules. Specifically, regions are expected to:

- (a) ensure compliance with those schedules through monitoring progress and by taking additional enforcement actions where there are violations of the schedules;
- (b) review the compliance status of filtered systems with the performance criteria in the rule; take actions against all systems which become Significant Non-compliers (SNCs) and against those non-SNCs to the extent resources allow;
- (c) review the status of ground water systems which have been determined to be under the influence of surface water. Take actions to ensure that those required to filter are on an enforceable compliance schedule;
- (d) review the compliance status of those systems which are unfiltered and are allowed to remain unfiltered. Take actions as appropriate, particularly in priority watersheds.

In FY 2000, for all public water systems, regions will focus compliance assistance on provisions of the Interim Enhanced SWTR which will become effective in November 2001. This effort will include outreach and education programs to ensure that sources understand the requirements and assistance to help them develop the programs and system changes needed to implement the rule(s).

*Timeframes:* Actions will be taken throughout FY 2000/2001. Regions will be expected to assess progress at the end of each fiscal year and identify activities that support the goals of the President's "Clean Water Action Plan."

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

CAA-NSR  
and PSD

*Priority Activities:* 1) Identify plants or facilities to be evaluated for possible significant violations of New Source Review (NSR) or Prevention of Significant Deterioration (PSD) requirements, particularly focusing on the coal-fired electric utility industry (refer to the Petroleum Refining priority area section for guidance on specific petroleum refinery NSR/PSD priority activities). Other industry sectors that, upon evaluation, appear to demonstrate NSR or PSD violations can be included in this priority. 2) Initiate investigations. 3) Develop a list of modifications or additions (either physical or operational) that the facility may have undergone without appropriate state or Federal review. 4) Inspect plants and issue Clean Air Act 114 requests and/or conduct administrative depositions of key plant personnel to identify those activities that may be NSR or PSD modifications. 5) Initiate enforcement actions and/or provide compliance assistance/incentives, as appropriate.

*Selection Rationale:* New Source Review (NSR) requirements in the Clean Air Act (CAA) are intended to ensure that the construction of new sources or modification of existing sources does not jeopardize the attainment of National Ambient Air Quality Standards in non-attainment areas. Prevention of Significant Deterioration (PSD) requirements ensure that areas with relatively clean air are not significantly degraded by the influx of new air pollution sources. Both NSR and PSD requirements can add substantial costs to the construction or operation of new sources, thereby creating an incentive for sources to avoid permit review by state or Federal authorities. In addition, some sources may have unintentionally violated these requirements due to misunderstandings of the applicable law. Avoidance of the required review results in inadequate control of emissions, thereby contributing thousands of unaccounted tons of pollution each year, particularly of Nitrogen Oxides, Volatile Organic Compounds, and Particulate Matter. These emissions worsen problems in non-attainment areas and threaten to drive attainment areas into non-attainment. A review of permitting history over the past few years indicates that states are issuing very few NSR or PSD approvals, despite the fact that trade association journals and economic indicators show that industrial facilities have significantly increased their production and modified their processes to a degree that should have triggered many NSR and PSD actions. Due to base closings and realignments over the past few years, many Federal facilities have increased or modified their operations which may have triggered NSR and PSD actions. Investigations conducted to date by Headquarters, the regions and the National Park Service suggest high noncompliance rates (in excess of 50 percent).

*Performance Expectations for Clean Air Act NSR and PSD*

1) Each region should target sources to identify instances, including Federal facilities, where there is "probable cause" to believe NSR/PSD violations exist. To the extent information is available, Headquarters will provide such information to assist regions and states in identifying sources that should have an NSR/PSD permit. During each

year, Regions and states that choose to participate should initiate or continue conducting in-depth investigations on an average of two plants per state in their jurisdiction, particularly focusing on the coal-fired electric utility (i.e., a region with six states should investigate 12 facilities per year, though not necessarily two in each individual state).

2) For each source identified by the region and participating state, tribal, and local agencies, initiate an investigation to ascertain if plant activities have (or should have) triggered NSR or PSD. These investigations should include a review of comprehensive information on each plant or facility (e.g., state environmental files, filings with state utility commissions or permitting authorities, FERC and SEC filings, synthetic minor permits, etc.).

3) Each investigation should result in the development of a list of modifications or additions (either physical or operational) that the facility may have undergone without appropriate state or Federal review. This list will help focus subsequent inspections, fact gathering and case development.

4) Regions and participating state, tribal, and local agencies should inspect plants and issue CAA 114 requests and identify those activities that may be NSR or PSD additions or modifications.

5) Based on the results of the investigation, regions should initiate an appropriate enforcement response.

*Timeframes:* Identification of sources to be investigated for compliance with NSR/PSD requirements should occur during the first quarter of each fiscal year. Investigations of identified sources should commence during the second quarter, and continue throughout each year, as appropriate. Investigations, including, as necessary, inspections and issuance of CAA 114 requests and depositions should occur as part of the investigation process. Initiation of enforcement actions, such as Notices of Violation and referral of cases to the Department of Justice should occur throughout each fiscal year.

### **Maximum Achievable Control Technology (MACT) Standard Adoption Becomes a National Priority in the Year 2000**

CAA--  
AIR TOXICS

*Priority Activity:* Regions should adopt 1 or 2 Maximum Achievable Control Technology (MACT) standards per year and become national enforcement/compliance experts for the selected MACT. Priority should be placed on the MACT standards which have recently become effective or will become effective during the MOA cycle.

*Selection Rationale:* The enforcement emphasis for air toxics/MACT standards will be to focus on reducing public exposure to toxic air emissions, to target enforcement at sources, including Federal facilities, involving high risk, and to target inspections, regulation implementation efforts and compliance assistance at sources for which

regulations have already been in effect. Regions should identify high-risk air toxics sources and target these for regulation implementation and compliance assistance activities. It is also a priority to ensure that sources emitting air toxics HAPs are properly permitted as major sources. MACT standards are promulgated to regulate the most hazardous air pollutants, and those posing the highest degree of risk to human health and the environment.

*Performance Expectations for Clean Air Act Air Toxics*

- 1) Regions should adopt 1 or 2 MACT standards per year. The selection of a MACT(s) can be based on a particular regional interest or environmental impact to the region. Criteria that the region may consider when selecting a MACT may include: number of affected facilities, facilities' compliance history, risk to airshed or population, impact on high priority areas, or any other criteria that impact the region. Ideally, no more than three regions should adopt the same MACT standard. Headquarters will coordinate among the regions MACT standard adoption, and, to the extent such information is available, provide specific information to assist regions in selecting their appropriate MACT standards.
- 2) The regions should share their findings and any material they develop with other regions to facilitate the other regions' ability to implement and enforce the MACT standards.
- 3) Regions with Headquarters' support should develop compliance assistance tools that can be made available to all regions and states to assist sources to comply with these standards. In addition, regions should work with state tribal, and local agencies on developing such tools and delivering compliance assistance to sources for air toxics rules that are newly promulgated, especially those rules that affect small businesses.
- 4) The regions should work with the state, tribal, and local agencies to promote delegation of the MACT standards, and ensure that state, local and tribal agencies conduct compliance inspections and take appropriate enforcement actions in the 1 or 2 selected MACT standard adoption areas. If state, tribal, and local agencies do not take appropriate enforcement action, the regions should assume the enforcement lead in accordance with the established policy on Timely and Appropriate Enforcement Response to High Priority Violations.

*Timeframes:* Adoption of MACT standards to evaluate should occur during the first quarter of each fiscal year. Identification of sources subject to the standards should follow in the second quarter, with commencement of inspections of MACT sources during the third and fourth quarters of the year. Identification and documentation of MACT standard compliance assistance tools transferrable to other source categories should be coincident with the above activities, as appropriate. Assistance to states

and oversight of their air toxics permitting activities should occur throughout FY 2000 and FY 2001.

## Targeting Companies Which Handle Hazardous Waste Illegally

### *RCRA PERMIT EVADERS*

*Priority Activity:* To ensure that dangerous treatment and recycling practices are eliminated and to ensure the equitable treatment of those facilities that have complied with RCRA, regions should focus compliance monitoring and enforcement resources on those companies, including Federal facilities, that have evaded the RCRA regulatory system. In addition to waste derived fertilizer and foundry facilities, the focus will include illegal hazardous waste recycling practices, illegal dilution of hazardous waste, and wastes that are no longer exempt under the Bevill amendment. Additionally, this initiative will include as a focus companies that have sought to include themselves within the ambit of various exceptions or exemptions to the RCRA Subtitle C system but failed to meet the terms of those exceptions or exemptions.

*Selection Rationale:* Un-permitted waste handling and management operations present significant environmental threats. Further, their unpermitted operations continue to economically undercut those facilities that operate in compliance with environmental laws. In several areas, there is concrete evidence of wide-spread non-compliance with the RCRA permitting requirements. For example, two regions have looked intensively at foundries over the past few years. In both instances, the regions found significant non-compliance with the RCRA regulations, including unpermitted units and shipping wastes to non-hazardous waste landfills. In one region, one-third of the facilities inspected had failed to apply for the required RCRA permit. Similarly, air emissions from these facilities are a potential problem area, particularly for lead. For example, many facilities had baghouses that were in disrepair or completely bypassed, allowing emissions to vent directly into the atmosphere. Other facilities did not have any form of air emission controls. Allowing facilities to operate outside of RCRA presents an unreasonable risk to health and the environment. For example, manufacturers of waste derived fertilizer are receiving hazardous wastes to produce a product placed on the land without managing such wastes in compliance with Subtitle C. In January 1997, Region VII issued a RCRA § 7003 order to one facility because their processing of incoming secondary hazardous materials to produce fertilizer resulted in a release of lead and cadmium to the environment, contamination of the facility and nearby wetlands. It also resulted in employee airborne lead exposure levels that were 16.6 times higher than the allowable level and lead to an Occupational Safety Health Administration (OSHA) citation for violations of its lead standard. Another facility is now a Superfund site because of a zinc oxide pile that was leaching into the groundwater.

### *Performance Expectations for RCRA Permit Evaders*

Regions should work with OECA to develop a national strategy that can then be

tailored by the regions to identify and inspect appropriate facilities, including Federal facilities. The strategy should specifically address the following: identification of high risk facilities, areas, and/or communities of highest priority, compliance monitoring approach, state involvement, enforcement response options, settlement approach, time frames, goals for improving the compliance rate for a given sector, and measures of success (i.e., changes in storage or disposal practices, industrial process changes, requests for new permits or permit modifications).

While compliance monitoring and formal enforcement actions serve as deterrents, it is also important to achieve significant environmental benefits beyond regulatory compliance levels (voluntary reductions in emissions). Thus, we encourage each region to include (as part of its settlement approach) supplemental environmental projects (where appropriate) that reduce emissions or discharges associated with “persistent, bio-accumulative and toxic” wastes (aka PBT wastes) and other priority chemicals being emitted or released. Where appropriate, issuance of RCRA Section 7003 orders that address upsets and episodic releases or emissions should be considered.

*Timeframes:* A workgroup consisting of representatives for OECA and several EPA regional offices will develop an overarching compliance assurance and enforcement strategy for this priority. This strategy will be completed in mid-FY 1999. FY 2000/2001 time-sensitive activities for this priority will be reflected in the region-specific strategies for identifying and inspecting appropriate facilities (as described in the Performance Expectations Section above).

### **Petroleum Refinery Sector Continues as a National Compliance and Enforcement Priority for the Years 2000/2001**

***PETROLEUM  
REFINING  
(SIC 291)***

*Priority Activities:* Given the size, complexity and sophistication of this sector, the majority of the Agency’s resources should focus on compliance monitoring and enforcement-related activities. Enforcement-oriented activities will focus on the use of investigations (rather than traditional single/multimedia inspections). However, to change behavior, improve compliance and, more importantly, reduce emissions, other approaches are also needed. Some problems may be addressed proactively by clarifying policy, others may be better handled through a robust, aggressive enforcement program and still others may require a combination of tools (e.g., a Compliance Assistance Program (CAP) .

With respect to the Clean Air Act program, the regions should continue to follow the FY 98/99 sector strategy with an emphasis in two areas: 1) focus on NSR/PSD investigations and 2) increase their focus on comparative LDAR investigations. During

FY 98/99, the regions committed to investigate ~25% of the sector for NSR/PSD issues and only ~6% of the sector for comparative LDAR.

' The emphasis on NSR/PSD is due to early indications that the regions are finding significant problems in that area. Region 3 has put together a database that should enable other regions to target sources for inspection. This can possibly be done in several ways: 1) investigate all targeted sources themselves; 2) enlist state aid/support to investigate all targeted sources; 3) if 1) or 2) cannot be accomplished, offer some type of CAP program (These options need to be discussed between Headquarters and the regions in order to develop a nationally consistent approach).

' The regions should increase their efforts on comparative LDAR because TRI reports indicate that over 50% of the emissions to the air from refineries come from fugitive sources. Information from NEIC indicates that refiners are not as good as they should be at finding leaking components, most probably due to improperly following the required work practices. If performance in this area improves, it should have a significant impact on reducing emissions.

As part of the RCRA program's strategy, regions should ensure that refineries are:

- 1) making comprehensive and accurate waste and waste stream determinations;
- 2) complying with the requirements of the Petroleum Refining Process Wastes Listing (August 6, 1998 Final Rule); and
- 3) complying with RCRA air emissions requirements (Subparts AA, BB, and CC).

*Selection Rationale:* Addressing air emissions and un-permitted releases from refineries continues to be a high priority for EPA and other stakeholders (e.g., environmental justice organizations). There are currently 162 operable domestic refineries spread among nine regions, down from over 320 in the early 1980s. Criteria pollutant emissions ranking of this sector (compared to 17 other sectors using data from the Air Information Retrieval System (AIRS) database) indicates it is:

- C 1st for VOCs
- C 1st for SO<sub>2</sub>
- C 2nd for NO<sub>2</sub>

TRI releases reported for 1996 averaged 493,162 pounds released per facility. The vast majority of refinery releases are to the air (~75%), with ~24% to the water (~20% to underground injection wells and ~4% to surface waters) and only ~1% to the land. Seventy-six refineries are within three miles of population centers containing 25,000+ people and 44 are within three miles of 50,000+ people. Refineries are routinely and regularly inspected and many of the inspected facilities have had *multiple* enforcement actions taken against them. Forty-five percent of the facilities are in current significant noncompliance for air, 12% for water and 14% for RCRA. By statute and based on the percentage of total emissions from refineries and noncompliance history, air issues

should be a priority; waste (RCRA) or water issues might be next. Although water accounts for 24% of total TRI releases, RCRA noncompliance is higher than for water.

*Performance Expectations for the Petroleum Refining Sector*

With respect to the Clean Air Act Program, a common action item for all elements would be to identify Agency rules/policies/guidances that may adversely affect the strategy element implementation or enforcement, and work with Headquarters to secure identified improvements to rules/policies/ guidances. Specific expectations are:

( For NSR/PSD, use Region 3's database (or some other appropriate method) to target and address remaining sources that have had significant increases in their production capacity. Identify in your MOA the number of sources that had significant increases, and your approach for addressing these sources.

( Regions should investigate at least 1/3 of their sources for LDAR by the end of 2001 (this includes any commitments that the regions made during FY98/99). A thorough LDAR investigation should take no more than one week in the field, and significantly less office time than a NSR/PSD investigation, since statistics will be used to enforce significant differences in LDAR monitoring results.

As each region has significantly different resources at their disposal and each region may have significant issues other than the two proposed, regions should do additional investigations for other elements of the strategy as resources or circumstances allow, and deviate from the above with proper justification.

With respect to the RCRA program, regions should work with OECA to develop a media-specific strategy that can then be tailored by the regions to identify and inspect appropriate facilities, including Federal facilities. This RCRA-specific strategy will be consistent with the sector national strategy.

*Timeframes:* Regions should investigate at least 1/3 of their LDAR sources by the end of FY 2000. Other activities should be ongoing throughout the entire MOA period.

**New Sector in FY 2000/2001– Metal Services**

***METAL  
SERVICES  
(SIC 347)***

*Priority Activities:* The immediate task will be the development of a national enforcement and compliance sector strategy, by a regional and Headquarters workgroup. The workgroup would review past and current efforts in both compliance assistance and enforcement; develop a universe of metal service facilities, including

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**Final FY 2000/2001 OECA Memorandum of Agreement (MOA) Guidance**

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Federal facilities; identify any anomalies inherent to this sector and establish goals and milestones. The workgroup would also develop problem statements; formulate specific actions including using compliance assistance, incentives, monitoring and enforcement and devise measures to be undertaken to demonstrate progress in implementing the sector strategy and a plan for involving states in the strategy development. The workgroup will build upon current efforts involved in the Headquarters' Common Sense Initiative (CSI) for this sector.

Examples of potential objectives, projects and activities that could be included in the development of a sector strategy are:

- C An identification of the universe of metal services facilities, including Federal facilities, using existing EPA databases, CSI, and commercial databases;
- C Establish regional metal services sector noncompliance rates using existing data; statistical methods; compliance audits, or compliance inspections;
- C Develop a compendium of Headquarters and regional compliance assistance and enforcement projects underway as parts of on-going national initiatives;
- C Develop and/or offer outreach assistance to POTWs to increase local compliance assistance, investigation and enforcement capabilities.
- C Develop and/or offer Headquarters and regional compliance assistance to enhance pollution prevention and waste minimization;
- C Develop and carry out pilot programs to identify any "rogue" facilities i.e. those metal services operations not currently part of any required regulatory program;
  
- C Meet with representatives of the sector trade associations (national, regional and local) to describe objectives, goals, linkages with other Agency efforts and to partner on compliance assistance projects;
- C Develop sector compliance assistance tools and consider employing compliance assistance approaches particularly for small businesses;
- C Establish measures of success for the sector;
- C Ensure timely enforcement actions against facilities in significant noncompliance.

*Selection Rationale:* The metal services industry (SIC 347) ranked as the eighth highest sector concern based on OECA data which combined noncompliance and pollutant information. In addition, based on OECA data, the metal services industry ranked second nationally for land noncompliance and pollutant releases, and had the second highest number of facilities located nationwide, 959. The metal services industry uses numerous types of hazardous materials in the plating and coating of metal, such as cadmium, chromium, cyanide, lead, mercury and selenium. The use of significant quantities of acids are used in preparing and coating the metal surfaces. Finally, the metal services sector generates large quantities of RCRA listed and characteristic wastes including OO6, the sludges generated from pretreating industrial waste water. Very few metal services facilities hold NPDES permits as direct

dischargers. Most are indirect dischargers subject to both categorical water quality standards and local pretreatment requirements. Despite these controls, it is estimated that metal services operations contribute almost 50% of all metals found in wastewater treatment plant sludges.

Geographically, the metal services industry is widely distributed throughout the country. This industry is characterized by numerous but very small operations. The sector notebook noted that over 90% of the facilities had less than 50 employees. Because of the small size of these facilities many are located within residential and mixed use neighborhoods providing potential opportunities for significant accidental releases.

*Performance Expectations for the Metal Services Sector*

Each region should assign a metal services contact to work with OECA to develop a national enforcement and compliance assurance strategy for this sector. The metal finishing sector was one of six industrial sectors selected for the Common Sense Initiative, for which a suite of sector specific, National Strategic Goals (NSG) was developed. These goals are directed toward both reducing the impact of this sector on the environment and in streamlining the environmental regulatory process. In all likelihood, the sector strategy would utilize the CSI goals in setting performance expectations for this sector.

*Timeframes:* The establishment of a Headquarters and regional work group and the development of a strategy will begin in the third quarter of Fiscal Year 1999. Completion of the strategy would be anticipated in January of 2000 with metal services sector-specific activities to be included in the FY 2001 MOA guidance update.

**Goal 7: Expansion of Americans' Right to Know About Their Environment**

*SUPPORTS  
NATIONAL  
PRIORITIES*

This goal promotes the public's right to know about the pollutants in their environment, including the condition of the air they breathe, the water they drink, as well as the health effects of chemicals used in the food and other products they buy. This information is especially important for minority, low income and Native American communities that may suffer a disproportionate burden from poor environmental conditions. Access to information helps citizens increase their understanding and knowledge of compliance conditions to enable them to make informed decisions regarding environmental issues in their communities. Within Goal 7, Objective 1 contains the enforcement and compliance activities, many requiring action from EPA Headquarters, although there are regional components.

*MAJOR  
ACTIVITIES*

The enforcement and compliance program supports this objective through two major

activities. First, it works to ensure high quality, accurate data in the national data systems. In addition, it works to upgrade and expand the delivery system to provide the public with easy access to timely and accurate data to increase community knowledge and participation in environmental decision-making. The second area of activity for the enforcement and compliance program is the implementation of a strong national environmental justice program so that all people live in clean healthy and sustainable communities. The national program must ensure that EPA's policies, programs and activities fairly address minority and low income community, public health, and environmental issues so that no segment of the population suffers disproportionately from adverse health or environmental effects.

*Objective 1:* By 2005, EPA will improve the ability of the American public to participate in the protection of human health and the environment by increasing the quality and quantity of general environmental education, outreach and data availability programs, especially in disproportionately impacted and disadvantaged communities.

While the seven national priorities have no discrete activities which fall under Goal 7, as regions and states implement the national priorities they need to consider their impact on environmental justice areas as well as the opportunity to focus on public access to ensure success. We anticipate that regions in their MOA may identify Goal 7 activities as part of their implementation strategy for national priorities or as a Regional priority.

## **REGIONAL AND STATE PRIORITIES**

### ***OVERALL PICTURE***

Since the regions and states are developing their own priorities through a joint work planning process, this guidance requires that, in addition to identifying how they will participate in the national priorities, regions identify their own priorities, as well as identify the major state priorities on a state-by-state basis. For their own priorities, regions will be expected to describe the rationale for the priority, the expected accomplishments, and the resource trade offs necessary to support the priority. Regions should also identify the measures they will use for evaluating progress. For state priorities, regions are asked to identify state priorities that contribute directly to national priorities as well as the most significant state priorities, along with a brief rationale for their selection. This section should also make clear how regions are contributing to the achievement of state priorities. The goal of this section is to ensure that a full picture of priorities and work sharing for the national enforcement and compliance program is available.

## **MANAGEMENT FOCUS**

**PURPOSE** The principal purpose of this section is to provide each region with the opportunity to identify specific issues or program areas about which it is concerned. The region may be seeking OECA assistance or simply informing OECA senior management of potential problems. In addition, this section also provides the national program manager with the opportunity to identify management issues that it would like all regions to address.

**Regions Provided Opportunity To Identify Management Issues**

**REGIONAL  
ISSUES**

Each region should identify and discuss three to five region-specific management issues. These issues might be either internal to the region or involve external parties. Examples include weakness in implementation of specific programs, training or skills deficits in the region, difficulties in addressing Inspector General (IG), General Accounting Office (GAO), or regional evaluation recommendations, or other weaknesses in state and regional programs. Regions should briefly describe the nature and extent of the issue, steps planned to address it, and recommendations or requests for joint strategies or assistance. During negotiation of regional MOAs, OECA will work closely with each region to develop the most effective method to resolve these issues. We encourage a candid discussion of regional issues, as this provides a valuable opportunity for both the regions and OECA to cooperatively address specific issues that influence each region's ability to ensure compliance and enforcement that is consistent with Agency and regional goals.

**Three National Issues in Year 2000/2001 Plan: OECA Tribal Strategy, Enhanced Performance Measures, and EPA-State Coordination**

**NATIONAL  
ISSUES**

In addition to the region-specific issues, each region should also address the following three national management challenges in their MOA submissions. Regions should identify how they propose to address these management challenges and indicate any anticipated trade-offs which may be needed to address activities in support of these efforts.

**' OECA Tribal Strategy**

During the second half of FY 1999, OECA expects to issue its strategic plan for Indian Country. The strategy, which will be issued under separate cover, identifies the activities that OECA and the regional programs should take to implement the enforcement and compliance assurance program over the next five years in order to protect human health and the environment in Indian country. The strategy will emphasize compliance assistance, compliance incentives, and enforcement to carry out

these goals. Some of the specific elements of the strategy -- which has both short term and long term components -- will be implemented by OECA Headquarters, some by the regions, and some will be implemented jointly by both Headquarters and the regions. Regions should refer to the strategy (when issued later this year) and to the OECA Tribal Program core write-up within Attachment 4 and discuss any management issue affecting their ability to implement the tribal strategy.

' **Implementation of Enhanced Performance Measures**

In FY 2000/2001, OECA will expand its emphasis on outcome-based performance measurement. During this period, implementation of enhanced performance measures will be completed and the measures developed as part of OECA's National Performance Measures Strategy (NPMS) will be used as a management tool to analyze and improve program performance.

Through extensive consultation with regional offices, state regulatory partners, and external stakeholders, the NPMS has identified twelve sets of performance measures (indicators and eleven measure sets). During 1998, regional and Headquarters workgroups and expert consultants worked to design these measures and prepare them for implementation. The measures developed through the NPMS have served as the basis for the performance measures in OECA's FY 2000 Annual Performance Plan and the accountability measures agreed to by EPA and ECOS for use in Performance Partnership Agreements.

To ensure effective implementation of enhanced performance measures, each regional office is requested to designate a manager or senior staff person as a Performance Measurement Lead. Persons serving as leads would be expected to: (1) coordinate or direct appropriate regional personnel involved in implementation of performance measures; (2) explain the need, purpose and use of individual performance measures to enforcement and compliance assurance staff and managers; (3) facilitate accurate and timely reporting of data necessary to support performance measures; (4) promote the use of performance measures as a tool for improved management and enhanced public accountability; (5) provide suggestions and proposals to Headquarters about improvements in the design, implementation and use of performance measures and (6) work with states conducting measurement pilots. Leads will be asked to participate in monthly conference calls to discuss implementation issues and possible measurement improvements.

' **EPA-State Coordination on Enforcement and Compliance Assurance**

Over the past three decades, joint EPA and state efforts have brought about significant environmental progress. To continue this progress and build strong relationships with our state partners, EPA seeks to promote a constructive dialogue with states on enforcement and compliance assurance activities. As part of the core program,

described in greater detail in Attachment 4, this year EPA is addressing state concerns about joint planning and priority setting, work sharing, and oversight responsibilities by identifying this as a management focus area to be addressed by each region in the FY 2000/2001 MOA process.

There are three principal components of this EPA - state coordination: (1) joint planning, priority setting, and work sharing arrangements; (2) ongoing consultation on enforcement and compliance assurance activities; and (3) periodic meetings with states to discuss program status and issues.

As part of assessing the state of environmental compliance, EPA, in consultation with the states, will focus our program evaluation resources on a national assessment of major elements of statutory programs. These reviews will focus on both regional and OECA implementation, as appropriate. In FY 2000, the regions will be expected to review the same selected elements in one or two of their states. These reviews may be conducted as part of statewide comprehensive enforcement and compliance or media program reviews that are already planned by the region. OECA, in consultation with the regions, will review the progress of the program element reviews in FY 2000 and will initiate new program element reviews in FY 2001, as appropriate.

Each region should identify how they propose to address the EPA-state coordination requirements described in the core program, and how they will participate in the program reviews, once the review focus is established. Regions should also indicate any anticipated trade-offs which may be needed to address activities in support of these efforts.

## **CORE PROGRAM**

### ***REVAMPED***

#### ***CORE***

EPA is committed to the concept that maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. Recognizing the magnitude of maintaining the core program and the variation in workload across the regions, regions may need to make adjustments within their core program. The negotiation process will provide the opportunity to address difficult trade-offs within the core. For FY 2000-2001, the core program description has been updated to reflect activities not previously included, such as the use of air investigations in lieu of some routine inspections, and new core program descriptions for environmental justice, the multimedia program, and tribal activities have been added. In some cases, core program descriptions have been revised to reflect a specific area of emphasis. An example of added emphasis would be inclusion of Federal facilities in compliance monitoring and enforcement activities for some statutory programs. Finally, the core program section has an up-front discussion on joint work planning and oversight responsibilities that expands on the discussion in

the earlier Management section of the guidance and applies to all core programs.

***EXCEPTIONS-  
BASED***

***REPORTING***

For this guidance, the core sector writeup has been revised to ensure work committed to under the national sector strategies is completed. Regions should include in their MOA their commitments to completing this work. Since dry cleaning, a national priority since FY 1996, is no longer a national priority in FY 2000, regions are also requested to submit a dry cleaning maintenance plan as part of their MOA submission, unless they can indicate why such a plan is not needed. Aside from commitments to complete national sector strategy activities, and submission of a dry cleaning maintenance plan, regions need only report exceptions to the core program. In its discussion of the core program, the region should identify, by media or program area, any changes or tradeoffs to the core program across or within program areas, and provide an explanation. For more specific information on core activities and reporting see Attachment 4, core writeups, and Attachment 3, MOA Reporting Format and Instructions.

## **INSPECTION PROJECTIONS**

As in the past, regions are asked to provide projections of program activity for regional and state inspections and for addressing drinking water significant noncompliance by region/by state. Attachment 5 contains the definition and format for FY 2000 inspection projections and drinking water SNC. Please use these forms to enter inspection projections for the following media: NPDES, Pretreatment, RCRA (includes UST), TSCA (includes Lead), EPCRA, and Clean Air Act, and to provide drinking water SNC fixed-base commitments.

## **RESOURCE INFORMATION**

***RESOURCE***

***ACCOUNTING***

Attachment 6 presents the resource utilization charts which regions should complete as part of their FY 2000 MOA. The regions will report in basically the same format used in the FY 1999 MOA update guidance with three changes: (1) FTE information will be provided for regions to review and revise based on the FY 1999 Operating Plan, and on the FY 1999 regional information submitted as part of the FY 1999 MOA update; (2) no reporting is requested on extramural dollars in FY 2000; and (3) state grant information for compliance and enforcement is not requested. The information requested is necessary to account for enforcement and compliance activities to support budget documents and meet GPRA requirements and to inform Congress and others as to resource allocations and results. For FY 2001, we expect to collect only exceptions-

based resource information. OECA senior management is committed to using these numbers wherever possible to address budget and resource questions and during regional visits, thus limiting the ad hoc requests to regions for this information.

## **SUPPORT REQUESTS**

### ***DELIVERING***

#### ***SUPPORT***

As in past years, OECA is providing support for FY 2000/2001 national and regional enforcement and compliance activities and priorities (Attachment 7). Additionally, Attachment 8 provides the information NEIC is requesting by June, 1999, to start their review and commitment process for support. Regions should submit this information directly to NEIC and begin discussions to allow for final agreements from NEIC during the negotiation phase immediately following the September 1, 1999, due date for the FY 2000/2001 MOA. Regions should include any remaining support requests within their MOAs submitted for Headquarter's review and response and provide a copy of any correspondence with NEIC regarding requests for their support.

## **ATTACHMENTS:**

Attachment 1: EPA Goals 9 and 7 Objectives and Sub-Objectives

Attachment 2: FY 2000 Annual Performance Goals and Measures and Accountability Measures

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

Attachment 4: Core Programs

Attachment 5: Inspection Projections

Attachment 6: Resource Charts

Attachment 7: Headquarters Support

Attachment 8: NEIC Support Requests

**EPA STRATEGIC GOALS AND OBJECTIVES: Goal 9 and Goal 7**

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

Objective 1: Identify and reduce significant non-compliance in high priority areas, while maintaining a strong enforcement presence in all regulatory program areas.

Sub-obj. 1: Achieve continuous improvements in compliance with environmental laws and regulations in high priority portions of the regulated community.

Sub -obj. 2: Through improved targeting of enforcement and compliance resources, ensure that at least 50% of all civil and criminal investigations and other compliance monitoring activities are conducted at high risk, disproportionately exposed, and other high-priority areas of non-compliance.

Sub-obj. 3: Consistent with national environmental and foreign policy goals, implement international commitments and U.S. Government priorities for enforcement and compliance cooperation with other countries.

Objective 2: Promote the regulated community's voluntary compliance with environmental requirements through compliance incentives and assistance programs.

Sub-obj. 1: By 2005, increase the number of violations reported and subsequently corrected through self-disclosure by the regulated community by 100% of the FY 97 baseline.

Sub-obj 2: Increase understanding of environmental requirements in the private sector and at state, tribal, local and federal facilities through the use of compliance assistance tools.

Sub-obj. 3: Review 100% of the significant proposed Federal actions (programs, projects, regulations and proposed legislation) to determine their likely environmental effects and remedy 70% of EPA's concerns with these proposed actions.

Goal 7: Expansion of Americans' Right to Know About Their Environment

Objective 1: By 2005, EPA will improve the ability of the American public to participate in the protection of human health and the environment by increasing the quality and quantity of general environmental education, outreach and data availability programs, especially in disproportionately impacted and disadvantaged communities.

Sub-obj. 2: Improve the public's access to information on regulatory requirements and to site-specific compliance with them.

Sub-obj 3: Provide the public, especially disproportionately-exposed and under-represented populations, with a meaningful opportunity to participate in the development and implementation of environmental protection strategies.



**Annual Performance Goals and Measures and Accountability Measures**

**GOAL 7: Expansion of Americans' Right to Know About their Environment**

**Objective 1: Increase Quality/Quantity of Education, Outreach, Data Availability**

**Annual Performance Goal:**

Ensure that EPA's policies, programs and activities including public meetings address minority and low income community issues so that no segment of the population suffers disproportionately from adverse health or environmental effects, and that all people live in clean, healthy and sustainable communities consistent with Executive Order 12898.

**Performance Measures:**

Number of EPA-sponsored public meetings held where disproportionately disadvantaged communities participate.

Increase number of states that have environmental justice programs.

Number of grants awarded to low income, minority communities for addressing environmental problems.

**Annual Performance Goal:**

Identify and manage "hot spots" where national environmental justice issues occur and to advise the Administrator on available solutions.

**Performance Measures:**

Respond within 60 days to requests made to each Region and AA-ship to address complaints heard during public comment period at NEJAC.

Conduct NEJAC meetings and focused Roundtable in local communities where problems have been identified.

**Annual Performance Goal:**

Improve public access to compliance and enforcement documents and data, particularly to high risk communities, through multimedia data integration projects and other studies, analyses and communication/outreach activities.

**Performance measures:**

Increase use of Sector Facilities Indexing Project website user sessions over FY1999 levels.

Increase by 50% (over FY1999 levels) the number of states with direct access to Integrated Data for Enforcement analysis (IDEA).

Percent of OECA policy and guidance documents available through the Internet.

**GOAL 9: A Credible Deterrent to Pollution and Greater Compliance with the Law****Objective 1: Enforcement Tools to Reduce Non-Compliance****Annual Performance Goal:**

Deter and reduce noncompliance and achieve enforcement and human health improvements by maintaining a strong, timely and active enforcement presence. EPA will direct enforcement actions to maximize compliance and address environmental and human health problems; 75% of concluded enforcement actions will require environmental or human health improvements, such as pollutant reduction, etc.

**Performance Measures:**

Percent of actions which require pollutant reductions.

Estimated pounds of pollutants reduced (aggregate).

Estimated statistically valid noncompliance rates or other indicators of noncompliance for selected environmental problems.

Establish baseline to measure percentage of significant violators with reoccurring significant violations within 2 years of returning to compliance.

Establish baseline to measure average length of time for significant violators to return to compliance or enter enforceable plans/agreements.

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

**Annual Performance Goal:**

Deter non-compliance by maintaining appropriate levels of compliance monitoring activity, particularly in priority areas. In 2000, EPA will conduct 15,700 inspections and investigations, 50% of which are targeted at priority areas.

**Performance Measures:**

Number of criminal and civil investigations.

Number of EPA inspections.

Percent of inspections and investigation (civil and criminal) conducted at priority areas.

**Annual Performance Goal:**

Ensure compliance with legal requirements by assuring that hazardous waste exports from the U.S. are properly handled. Implement U.S. international commitments, and gain enforcement and compliance cooperation with other countries, especially along U.S. borders (Mexico/Canada).

**Performance Measures:**

Ensure proper handling of 230,000 tons of hazardous waste exports.

**Annual Performance Goal:**

Improve capacity of states, localities and tribes to conduct enforcement and compliance assurance programs. EPA will provide grants, guidance documents, training, classes and seminars, and assist with selected inspections.

**Performance Measures:**

Number of EPA-assisted inspections to build capacity.

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

**Annual Performance Goal:**

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

**Performance Measure:**

Complete concept and being design phase of General Enforcement Meeting System (GEMS).

Develop and implement Quality Management Plans (QMPs) for remaining major systems. Including baseline data assessment.

Continue concept phase and begin design phase of PCs modernization.

**Objective 2: Increase Use of Auditing, Self-Policing Policies****Annual Performance Goal:**

Increase the regulated community's compliance with environmental requirements through their expanded use of compliance assistance.

The Agency will continue to operate small business compliance assistance centers and develop compliance assistance tools such as sector notebooks and compliance guides.

**Performance Measures:**

Implement methodology to measure behavioral change that results from targeted compliance assistance.

Implement methodology to measure environmental and human health improvements that result from targeted compliance assistance.

**Annual Performance Goal:**

Review 100% of major proposed Federal actions subject to the National Environmental Policy Act (NEPA) and successfully mitigate 70% of identified significant environmental impacts (i.e., those requiring EPA followup) through interagency negotiations.

**Performance Measures:**

Number of Draft Environmental Impact Statements requiring followup.  
Percentage of impacts requiring EPA follow-up which are successfully mitigated.  
Number of major proposed Federal actions, i.e., Draft Environmental Impact Statements (DEIS) filed.

**Annual Performance Goal:**

Review and document 100% of water treatment facility and New Source NPDES permits subject to NEPA and ensure projects meet all water quality requirements.

**Performance Measures:**

% of EPA NEPA compliance actions documented.  
Percentage of actions meeting water quality requirements.

**FY 2000 Accountability Measures for Enforcement and Compliance Assurance<sup>1</sup>**

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

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

## MOA Format and Instructions, Negotiation and Reporting Schedule

### A. Format

The following MOA format is provided to ensure a consistent presentation across regions and to ensure that each regional MOA is closely linked to the Agency Strategic Plan and Annual Performance Plan. Regions should use their MOA to articulate how they will implement national priorities, to identify regional and state priorities, to plan worksharing with the states, and as a basis for negotiating PPAs/PPGs with states. All regions should use the standard format and submit their MOAs electronically to Jack Neylan by September 1, 1999.

### I. Introduction

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

### II. Management Focus

Each region should discuss three to five region-specific management issues which they wish to bring to the attention of OECA senior managers. These issues might be either internal to the region or involve external parties. Examples include areas such as weakness in implementation of specific programs, training or skills deficits in the region, difficulties in addressing regional evaluation recommendations, or weaknesses in state programs. Regions should describe the nature and extent of the issues, steps taken to address the issues, and recommendations or requests for joint strategies or assistance. These issues might be included for the purpose of seeking OECA senior management assistance in resolving the issue or simply to inform OECA senior management of potential problems.

For FY 2000/2001, OECA has identified three national management challenges which all regions should address in their MOA submissions. The first is the implementation of the OECA Tribal strategy (which is expected to become effective by FY 2000), the second is the implementation of enhanced performance measures, and the third is improved coordination between EPA and states in planning and work sharing. Each region should provide a description of how it plans to address the management challenges identified in the Headquarters description under Section II of the Guidance, Management Focus.

### III. Priorities

#### A. Discussion of the Region's Contribution to National Priorities.

Regions should provide a brief discussion of how their activities will contribute to the achievement of national goals and objectives. Regions should report their activities for each national priority, identifying at least the following:

1. Identification of tools and activities the region will undertake to implement the priority;
2. Regional and state-specific contribution to priority in terms of performance expectations (where there is a state contribution, provide information state-by-state, where appropriate)
3. Any measures which the region will use to evaluate its progress/success, other than the national measures which will be identified in the May 1999 MOA Guidance;
4. Trade-offs which may be necessary to achieve goals;
5. If the region proposes not to participate in the priority, the rationale;
6. Headquarters support requests.

**B. Identification of Regional and State Priorities**

Regional Priorities: Regions should identify and address their own priorities which will contribute to achieving the objectives of Goals 7 and 9. Specifically, the region should address the following:

1. Identify specific regional priorities, organized by objective, providing a rationale for the selection, activities to be undertaken, expected accomplishments, measures to be used to evaluate performance, and trade-offs as necessary, as well as Headquarters support needed.
2. Identify any state contribution to regional priorities.

State Priorities: Regions are asked to identify state priorities that contribute directly to national priorities as well as the most significant other state priorities, along with a brief background for their selection. This section should also address how regional activities are contributing to the achievement of state priorities. The goal of this section is to ensure that a full picture of priorities and work sharing for the national enforcement and compliance program is available. Use the following chart to provide a brief summary of key state enforcement and compliance priorities, we are not looking for a detailed description or discussion of their workplan.

<b>State-by-State Priorities and Expected Accomplishments</b>	
For each state priority, provide one or two sentences for each of the following:	
State:	
State Priority	
Regional Contribution (if appropriate)	
Expected Accomplishments	

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

In this section for FY 2000/2001, the region should identify by media or program area, any exceptions, changes or tradeoffs to the core program, within or across program media, which it expects to make, and provide an explanation for those changes. In completing this section of their MOA, the region should explicitly consider whether its level of compliance monitoring and enforcement presence are likely to change significantly in any media; whether it will meet national guidance on timely and appropriate responses in all media; whether there are problems with a particular data system and information management system; and whether there are changes to the nature of its compliance monitoring program, e.g. to reflect a shift to conduct more resource-intensive investigations rather than routine inspections.

Regions should also note that adjustments have been made to the enforcement and compliance core program. Adjustments fall into 5 categories- 1) the addition of a section on EPA/state work planning and oversight, 2) updates and corrections in media areas, such as the use of investigations in the Air program, 3) added emphasis on Federal facilities and new core program write-ups to cover Environmental Justice, Tribal, and Multimedia programs, 4) negotiation and completion of national sector strategy activities as part of the core, and 5) parameters for submission of a sector maintenance plan. The core sector description for the sector strategies requests each region to provide commitments for activities it will undertake in FY 2000/2001 for each of the 7 national initiative sectors. In addition, since dry cleaning is no longer a national priority, the regions are requested to submit a dry cleaning maintenance plan as part of their MOA submission, unless they can justify why such a plan is not needed.

OECA will assume that regions are maintaining the existing core program except where the regional MOA identifies changes or tradeoffs that are necessitated by implementation of national or regional priorities. Aside from commitments to complete national sector strategy activities, and submission of a dry cleaning maintenance plan, regions need only report exceptions to the core program. See Attachment 4 for a more detailed discussion of the FY 2000/2001 Core Program.

### D. Inspection Projections

Regions are required to provide in their MOA, performance **projections** for the annual media-specific inspections and drinking water SNC. Attachment 5 contains the definitions and format for completing this information.

### E. Resource Information

Regions should review the resource charts which Headquarters will provide individually to each region. These FTE charts will show the FY 1999 Operating Plan, and the FY 1999 regional information based on last year's MOA submission by goal, objective and subobjective. Regions will need to review and revise the charts to reflect their current staffing distribution, and fill in the FY

2000 column. Each region will receive a disk that will provide their specific information on goal 9 as part of this guidance. Goal 5 charts will be sent out under separate cover within the next month.

### **B. Schedule for Developing and Negotiating FY 2000/2001 MOAs**

- Publish final MOA Guidance in April.
- Submit draft regional MOAs to Headquarters no later than September 1, 1999.
- Headquarters will review and negotiate MOAs within two months of receipt (November, 1999).
- Headquarters will consult with the regions in December, 1999 about whether changes or revisions should be made in priorities or guidance for FY 2001, the second year of the MOA.

### **C. Reporting Schedule**

- Mid-year reports are due by May 1, 2000 and 2001. (Note that this date may need to be moved up to accommodate Agency-wide mid-year reporting to meet GPRA requirements.) This report and subsequent conversations may also serve as the basis for making adjustments agreed upon by both Headquarters and the regions to address emerging needs, new data, amendment of statutory authorities, etc.
- In September of the year 2001, regions will be requested to submit a brief MOA Update which includes:
  - FY 2001 inspection projection information;
  - changes or adjustments in regional activities;
  - if necessary, resource information about FTEs.
- End-of-Year Report due November 15, 2000 and 2001.(Note that this date may need to be moved up to accommodate Agency-wide end of the year reporting to meet GPRA requirements.)

**Enforcement and Compliance Assurance Core Program Revisions**

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\* = new

## 1. INTRODUCTION TO CORE PROGRAM

The FY 1998/1999 OECA MOA guidance included a detailed, statute-specific core program description. This core program description has been updated in this MOA to reflect activities not previously included, such as the use of air investigations in lieu of some routine inspections, and new core program descriptions for environmental justice, multimedia program, and tribal activities. Also, a section has been added on EPA/state work planning and oversight. This section applies to all core programs and replaces the individual statute-specific state oversight sections which appeared in the FY 1998/1999 MOA guidance.

In some cases, core programs have been revised to reflect a specific area of emphasis. An example is the inclusion of Federal facilities in compliance monitoring and enforcement activities for some statutory programs. Federal facilities represent a significant component of the regulated community in some media programs. In addition, EPA's enforcement authorities against Federal facilities have been clarified in the last few years, making it clear that EPA has penalty authority under numerous statutes including, but not limited to, RCRA (including UST), SDWA, CAA, TSCA, (Title IV) and CERCLA.

### *Core Program Activities*

OECA is committed to the concept that maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. All regional programs should:

- C follow the applicable program enforcement response policies and timely and appropriate guidance (where these exist);
- C evaluate and resolve, consistent with the national audit policy, all self disclosures received;
- C track compliance with consent decrees and with administrative orders and take all necessary actions to ensure continued compliance;
- C reduce the backlog of administrative cases (if any), and work with the Department of Justice and Headquarters to develop, file, prosecute, and settle outstanding judicial actions;
- C include the small business policy under self-disclosures;
- C identify compliance problems and where compliance assistance can be an effective tool in conjunction with a strategic approach to solving the problems; and
- C provide data to national databases.

Recognizing the magnitude of maintaining the core program and the variation in workload across regions, regions may need to make adjustments within their core program. The negotiation process will provide the opportunity to address difficult trade-offs within the core.

### *Sector Core Approach*

In addition to the enforcement and compliance program approaches described above, certain follow through activities should be emphasized as part of the core program.

1. The core sector writeup has been revised for FY 2000/2001 in order to capture work being done by the regions in support of national sector strategies. The seven sector strategies include petroleum refining, coal-fired power plants, CAFOs, industrial organics, chemical preparation, iron and steel, and primary nonferrous facilities. The regions should continue to support work for these sectors, unless they provide an explanation for why they cannot do so (such as trading off resources to support national priority activities).
2. Three of the sector strategies, CAFOs, coal-fired power plants, and petroleum refining, will specifically be addressed as elements of FY 2000/2001 national priorities.
3. Additional elements of CAFOs, coal-fired power plants or petroleum refining not directly included in the priority, and elements of the four remaining sectors (industrial organics, chemical preparation, iron and steel, and primary non-ferrous metals) which the regions previously agreed to, should be incorporated into the region's core program for MOA submission and negotiation purposes.
4. Since dry cleaning, a national priority since FY 1996, is no longer a national priority in FY 2000, regions are also requested to submit a dry cleaning maintenance plan as part of their MOA submission, unless they can indicate why such a plan is not needed. Regions may also use the dry cleaning maintenance plan as a template for developing maintenance plans for other sectors, (e.g., auto service, pulp mills), where work has been completed. Submission of these plans is not required as part of this MOA submission.

Aside from commitments to complete national sector strategy activities, and submission of a dry cleaning maintenance plan, regions need only report exceptions to the core program. Regions may make tradeoffs within the core, either within or across media programs. In its discussion of the core program, the region should identify, by media or program area, any changes or tradeoffs to the core program and provide an explanation. In completing this section of the MOA, the region should explicitly consider:

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

### *Sector Core Activities*

The sector approach is one of the tools regions and states should use to improve facility compliance. By developing specific sector strategies, EPA and the states can think broadly about the nature of the compliance problems facing selected industries and identify an appropriate mix of tools to address specific problems. The overall goal of each sector strategy is to improve the compliance rate and reduce the total emissions, discharges, and releases from the overall sector. Full implementation of a sector strategy includes:

- C reviewing noncompliance data,
- C developing compliance histories,
- C evaluating actions taken against sector facilities,
- C identifying affected geographic areas,
- C working with state, tribal, and local partners to determine concerns,
- C identifying the size of the universe,
- C assessing the potential environmental harm, and
- C analyzing the human health risks.

Each sector strategy should identify special problem areas, and provides specific corrective measures. Over the past several years a group of national sectors have been priorities for the national enforcement and compliance program. During FY 1998/1999, OECA initiated national sector strategies for seven specific industrial/business sectors. The regions' and Headquarters' teams are well into the implementation phase of actions commenced in FY 1998 and FY 1999 for these sectors. During the course of FY 1999, the Headquarter-regional sector teams will evaluate progress made in implementing the sector strategies, and determine next steps to be taken in FY 2000/2001.

National sector strategies can be implemented in two ways in FY 2000/2001: 1) continued full implementation of activities under the strategy, or 2) a maintenance plan approach. Initiating a maintenance plan should be considered after the goals of the sector strategy have been achieved or a high level of compliance is otherwise obtained. The primary goal of a maintenance plan is to avoid a recurrence of significant compliance problems.

### *Specific Sector Core Expectations*

- C Three of the seven sectors (CAFOs, coal-fired power plants and petroleum refining) are addressed as elements of FY 2000/2001 national priorities.
- C For the other four sectors (industrial organics, chemical preparations, iron and steel, and primary nonferrous metals), activities, agreed to by the regions and Headquarters and the national initiative sector workgroups for FY 2000/2001, should be incorporated into the Region's core program MOA submission for negotiation purposes.
- C The regions should ensure that sufficient resources are committed to completing the activities identified under each of the national sector strategies, unless the region provides an explanation for why it cannot do so, such as a tradeoff for work being done in support of a national priority.
- C If facilities exist in a region which are impacted by a national sector strategy, but the region is unable to participate in strategy implementation, the region should provide an explanation in its

- MOA submission for why it cannot participate.
- C If a high degree of significant noncompliance exists in sectors where there is no national strategy, but for which the region or state has concerns, the region should devise a strategy for improving compliance rates, and submit its strategy as part of the MOA submission.

### ***Dry Cleaning Maintenance Plan***

Headquarters is specifically requesting a maintenance plan for dry cleaning. This plan should be a 2-3 page document submitted as part of the MOA submission, unless the region can indicate why such a plan is not needed. The elements of a maintenance plan can be implemented either by the region or the state. The following optional elements should be considered by the Regions when developing a sample maintenance plan:

- C Time-frame anticipated for plan to be in effect (duration of the plan is flexible)
- C Describe the mechanism in place for responding to citizen complaints/requests at a regional, state, tribal, and/or local level.
- C Continue to provide timely compliance assistance materials
- C Continue to maintain partnerships developed with the industry (contact stakeholders, trade associations network, mentoring program, ensuring tools continue to be available.)
- C Continue to implement a targeting strategy for compliance monitoring.
- C Continue to collect data for the measures identified for applicable environmental indicators, outcome measures, or output measures.

## **2. EPA-STATE COORDINATION ON WORKPLANNING AND OVERSIGHT**

EPA is addressing state concerns about the importance of joint planning and priority setting, work sharing, and effective oversight by identifying this as a management focus to be addressed by each region in the FY 2000/2001 MOA process. In addition, work planning and oversight are critical components of our core program. All programs should include EPA-state work planning, consultation and assessment activities. In developing the Regional discussion under “management focus” in the guidance, the Region should consider this core program description.

### **1. Joint Planning, Priority Setting, and Worksharing for Enforcement and Compliance Assurance**

The goal of this activity is to promote greater joint work planning between EPA and the states to achieve more efficient identification of enforcement and compliance priorities, deployment of resources, higher levels of coordination, and greater compliance. On a regular basis, senior regional and state management will discuss enforcement and compliance assurance program directions, initiatives, and tradeoffs as well as specific enforcement and compliance concerns that can be evaluated by the regions and states. Existing OECA guidance and policy, such as Steve Herman’s February 21, 1996 memorandum, “Core EPA Enforcement and Compliance Functions,” the November 27, 1996 “Operating Principles for an Integrated Enforcement and Compliance Assurance Program,” and the

1986 “Revised Policy Framework for State/EPA Enforcement Agreements” and its subsequent addenda, should continue to guide regional discussions.

Specifically, the regions and states will work jointly to develop priorities taking into consideration national program priorities, regional priorities, and state priorities for enforcement and compliance assurance as discussed in this guidance. The regions and the states will develop appropriate workshare arrangements to address identified priorities in federally authorized programs and to allow coordination of activities and sharing of results.

## 2. Consultation on Enforcement and Compliance Assurance Activities

Ongoing communication and consultation between EPA and states is critical for a smooth working relationship. This process will provide the regions and the states an opportunity to ensure that established notification procedures with respect to inspections and enforcement actions in federally authorized programs are followed. Specifically, it will enable discussion of initiatives, implementation efforts, and the status of projects/cases, including the “no surprises” policy. To effectively implement agreements, the regions and states should establish procedures to communicate the results to all organizational levels within each region and state, and to reflect results in EPA and state enforcement and compliance assurance agreements such as state enforcement agreements, memoranda of agreement, Performance Partnership Agreements, and grant agreements.

## 3. State-of-Environmental Compliance Analysis and Assessment

OECA envisions two ways in which EPA and the states will work together to analyze and assess the state of environmental compliance. First, EPA, in consultation with the states, will assess the general state of compliance and enforcement program implementation in all major program areas from reports drawn periodically from the data systems and from EPA and state sources of compliance information, and develop needed follow-up strategies. Second, each region will meet with its states frequently to identify areas of significant noncompliance, develop strategies to address those areas, and evaluate the effectiveness of those strategies. OECA will assist regions in problem identification, strategy formulation and evaluation, including by providing compliance information available from data systems on a periodic basis.

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

The “Water” Program encompasses six separate programs under both the Clean Water Act and the Safe Drinking Water Act. Each program has different characteristics (e.g., some programs have national data bases and some do not), and, as a result, the “core program” varies somewhat from program to program. Therefore, in order to provide clarity, each program is listed separately. This does not signify that the “water program’s core activities” are more specific or detailed than the programs under other statutes.

## **3. CLEAN WATER ACT PROGRAMS**

## **(A) NPDES and Pretreatment Programs**

Regions should consider all available data in implementing the compliance and enforcement activities described below. Examples of available data are: PCS data, DMRs, OW's "Index of Watershed Indicators," unified watershed assessments, fish advisories, shellfish bed and beach closure information, State 303(d) lists of waters and 305(b) reports, citizen complaints, and referrals from states, etc. Also, Headquarters is currently soliciting input from the regions on refining several targeting tools for the NPDES and pretreatment programs to facilitate the identification of problem facilities.

### **Compliance Assistance**

Regions, with the assistance of state agencies, should provide information and technical assistance via seminars, on-site visits, mass mailings, Internet, etc. to the regulated community to ensure that businesses and municipalities understand their regulatory obligations and know how to comply in the most cost-effective way. Regions should identify appropriate opportunities to utilize compliance assistance tools (in accordance with OECA's operating principles), especially where problems involve small businesses or small POTWs (minors) who often have technical difficulty understanding our environmental regulations (e.g., dry cleaners, electroplaters, auto repair/body shops, etc.). In addition, regions should support and encourage state small community environmental compliance assistance programs that are consistent with EPA's November 22, 1995 Policy on Flexible State Enforcement Responses to Small Community Violations.

Regional compliance monitoring personnel should be familiar with all compliance assistance tools (e.g. Compliance Assistance Centers, Sector Notebooks, inspection check lists, etc.). Regions should encourage state and local governments to utilize all of the Compliance Assistance Centers, as appropriate. All centers have information on how to comply with the NPDES program for their particular type of business. Note in particular four new centers that opened in the fall of 1998, the Transportation Compliance Assistance Center (TRANSOURCE) the Local Government Environmental Assistance Network (LGEAN), the Paints and Coatings Center, and ChemAlliance. LGEAN, specifically, is a valuable compliance tool for local governments to utilize. In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate,

disclosures submitted under the OECA audit policy and small business policy.

## **Compliance Monitoring**

### (a) Inspections

#### (1) NPDES PROGRAM

Regions and states must maintain an effective inspection program, and the strategy for ensuring this in every state should be defined in the MOA. It is an Agency goal to provide 100% coverage of all major NPDES facilities and POTWs with approved pretreatment programs or equivalent coverage of a combination of major and priority minor facilities annually. Regions should focus inspections in Clean Water Act priority areas as defined in the MOA. Regions may shift a portion of their total inspection resources from major to minor facilities, particularly in priority watersheds or facilities discharging to impaired waters (e.g. fish advisories, shellfish bed or beach closures, drinking water sources). Since an inspection at a major facility generally requires more resources than an inspection at a minor facility, inspection tradeoffs--that is the number of minor facilities substituted for major facilities--should be at a 2:1 or greater ratio. This ratio is based on previous work load models which averaged the amount of resources needed to conduct major and minor inspections. As we focus on newer sources, such as SSOs, or areas identified in the Clean Water Action Plan, such as beach closures, minor sources will be an important component of our inspection program. The region should briefly explain its inspection targeting process, particularly its rationale for trading off major inspections for minor inspections, in the MOA. Regions proposing to shift inspection resources from majors to minors must ensure that the necessary minor facility information and inspection data is entered into PCS, either by the Region or the State, in order to receive "credit." It is very important that minors data be reported into PCS to reflect our activities, show results and implement the Clean Water Action Plan. Beginning in FY 2000 we will rely solely on minor data entered into PCS to evaluate and report results.

#### Biosolids

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

#### **Performance Expectations**

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

## (2) PRETREATMENT PROGRAM

Regions and states must maintain an effective inspection program and the strategy for insuring this in every state should be defined in the MOA. In the pretreatment program, Regions must insure coverage in approved programs as well as those where EPA is the control authority. The goal is to annually inspect 100% of the POTWs with approved pretreatment programs in unapproved states, and 100% of the significant industrial users discharging to POTWs without approved programs in unapproved states.

### **Performance Expectations**

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

(b) Discharge Monitoring Report (DMR) Review/Review of Permit Compliance System (PCS) data, review of other information on compliance available to the region.

Regions should routinely review all DMR reports received for compliance with permit limits. (Note that regions may accomplish this review through a routine screen of the PCS data and reviewing the DMRs themselves as necessary.) Regions also should routinely review data submitted by states to PCS and review other information available to them on a facility's compliance with its permit and other Clean Water Act requirements. There is no reporting associated with this portion of the core program.

### **Enforcement Actions**

The underlying tenet of the compliance and enforcement program is that each violation deserves a response. The appropriate response to different types of violations is contained in the Enforcement Management System (EMS). Regions are expected to evaluate all violations, determine an appropriate response per the EMS, and take that action. Regions should focus actions in the priority areas listed in the MOA and the President's "Clean Water Action Plan" 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 with administrative orders and to take all necessary actions to ensure continued compliance with the terms of federal enforcement actions.

### Resolution of SNCs

Regions/states are expected to take timely and appropriate actions on significant noncompliers. Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for federal enforcement. No more than 2 percent of all major facilities should be on the exceptions list at

any one time. Regions not able to commit to this should identify this as an “exception” in their MOA submission and propose an alternative projection.

### **Performance Expectations**

To evaluate the pretreatment program, EPA will consider the following data that is currently reported into PCS: number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided by facility for those remaining on the Exceptions List.

### **Program Leadership and Evaluation**

#### Data Entry/Data Management

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

(1) Regions and states are expected to insure that all required data is input into the Permit Compliance System (PCS, including Federal facility data. DMR data entry will be monitored and is expected to be at least at the 95% level for majors. Where activities at majors have been traded off for activities at minors (e.g., inspections), regions and states are expected to input the PCS data for the minors.

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

Headquarters will monitor regional/state data entry quarterly.

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

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

The following activities are important to achieving the ongoing environmental goal of “no net loss” of wetlands and the goal of the President’s “Clean Water Action Plan” to achieve a net increase of 100,000 acres of wetlands per year by 2005.

### **Compliance Assistance**

Regions should target compliance assistance activities towards smaller landowners/farmers who may not fully understand the Section 404 program. Regions should closely coordinate these activities with the other federal agencies which may be involved. In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. As discussed in the core program definition, regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

Regions should have a process for identifying/targeting/inspecting and otherwise responding to illegal activities. Regions should report quarterly to OECA/ORE/WED on violations and investigations using the format developed during FY 98 and FY 99. During FY 99, a timely and appropriate policy will be developed for the 404 program. Regions will be expected to implement the policy in FY2000/2001. Since only two states have been delegated parts of the Section 404 program, this is primarily a federal effort. The regions must also coordinate, as appropriate, with other federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., Corps of Engineers, NRCS, Fish and Wildlife Service, etc.)

### **Performance Expectation**

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

### **Enforcement Actions**

The underlying tenet of the compliance and enforcement program is that every violation deserves a response. The appropriate response to violations is contained in the Section 404 EMS and other infrastructure improvements which are currently under development jointly by Headquarters and the regions. Headquarters and the regions have developed criteria for selecting and prioritizing cases and regions should now have a strategy in place and be fully implementing the case criteria guidance. In addition to initiating new actions, regions are expected to track compliance with consent decrees and

administrative orders and to take all necessary actions to ensure continued compliance with the terms of federal enforcement actions. To support the goal of the President's "Clean Water Action Plan," whenever appropriate in 404 and non-404 water enforcement settlements, regions should use supplemental environmental projects to restore and enhance wetlands and to create wetland mitigation projects.

### **Program Leadership and Evaluation**

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

The Section 404 program does not have a national data system. Regional wetlands program managers, however, are expected to report to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions. Regions are also expected to report quarterly to Headquarters (ORE/WED) using the format developed in FY 98 on violations and responses.

#### (b) Performance Expectation

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

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

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

### **Enforcement Actions**

The underlying tenet of the compliance and enforcement program is that every violation deserves a response. While the OPA program does not have a formal EMS, regions must have a program to identify violations, to prioritize violations for actions, and then to take appropriate actions. Regions are expected to comply with the Section 311 penalty policy issued in FY 98.

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

### **Program Leadership and Evaluation**

#### Data Entry/Data Management

Regions are expected to report to Docket all administrative orders, administrative penalty orders, and civil referrals, as well as to complete and enter the case conclusion data sheets for all concluded actions. Regions should routinely review the ERNS database on spills to ensure that all spills are being appropriately addressed.

#### **4. SAFE DRINKING WATER ACT PROGRAMS**

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

OECA will be seeking input from the Regions and from drinking water stakeholders to develop a strategy to implement the enforcement and compliance recommendations of the calendar year 1996 and 1997 annual National Public Water System Compliance Reports, and how activities to support implementation can be incorporated into each Region's MOA. The general recommendations are included in the descriptions below.

##### **Compliance Assistance**

Regions should target compliance assistance towards smaller drinking water systems, especially those with part-time operators. Data for calendar year 1997 show that 18% of small community water systems committed a major violation of monitoring and reporting requirements, as compared to just 7% of all other community water systems. In the same year, States reported major monitoring and reporting violations at 17% of small transient non-community systems and 21% of non-transient non-community systems, while reporting major monitoring and reporting violations at only 6% and 12% of all other transient non-community and non-transient non-community systems, respectively. Accordingly, Regions should work with the States to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform the required activities. The total coliform rule, historically the most violated MCL, is another area where compliance assistance to small systems can be expected to produce significant results. Here, Regions should encourage sanitary surveys and circuit riders as means of detecting and avoiding the conditions that lead to microbial contamination. When compliance assistance is not effective, Regions should pursue enforcement actions.

Regions should also focus compliance assistance on provisions of the Disinfectant Byproducts Rule which will become effective in November 2001. This effort will include outreach and education programming to ensure that sources understand the requirements and assistance to help them develop the program and system changes needed to implement the new rule. We encourage Regions to make use of the recently-established Local Government Environmental Assistance Network (LGEAN) as a ready source of compliance assistance information (both from EPA and from its non-governmental partners), and recommend marketing LGEAN to drinking water system operators as a compliance assistance tool. In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

## Compliance Incentives

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

## Compliance Monitoring

### (a) Inspections/Sanitary Surveys

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

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

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

## Enforcement Actions

(a) The underlying tenet of the compliance and enforcement program is that each violation deserves a response. The appropriate response to different types of violations is contained in the Enforcement Management System (EMS). Regions should evaluate all violations, determine an appropriate response per the above guidances, and take that action. To support the goal of the President's "Clean Water Action Plan" of ensuring that water is safe to drink, the Regions should evaluate the results of source water assessments and the unified watershed assessments in targeting some enforcement activities in FY00/01 where sources of drinking water are contaminated or threatened.

In addition to initiating new enforcement actions, regions should track compliance with consent decrees and with administrative orders and take all necessary actions to ensure continued compliance with the terms of Federal actions.

### Resolution of SNCs

Regions/states should take timely and appropriate actions on significant noncompliers which appear on the quarterly SNC reports. Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for federal enforcement. Specifically, in evaluating Regional performance, OECA will look at: the number of SNCs (and % of universe); number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining. Information needed to support this is already reported in RECAP and is already required to be reported to SDWIS. Regions not able to commit to this should identify this as an “exception” in their MOA submission and provide an alternative projection.

b) Implementation of the Safe Drinking Water Act Amendments of 1996: These amendments fundamentally changed the drinking water program by providing the Agency and the states new tools, for example, the State Revolving Fund and new enforcement authorities, including administrative order and penalty authority for Federal facilities. Headquarters and the regions have developed implementation plans.

### Performance Expectations

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

### Program Leadership and Evaluation

#### Data Entry/Data Management

Regions and states are expected to ensure that all required data is input into SDWIS, including Federal facilities as applicable. Regions with direct implementation programs, including those on tribal lands, are expected to input the data themselves. If Regions are directly implementing any of the new drinking water regulations, they must ensure that the required data is in SDWIS.

### (B) Underground Injection Control (UIC) Program

#### Compliance Assistance

Regions should target compliance assistance efforts at Class V wells delineated in source water protection areas and other areas where the potential for groundwater contamination is high (e.g. fractured rock and karst areas; sole source aquifers). In addition, regions should report on compliance assistance activities: telephone hotlines, workshops/meetings/trainings; compliance tools developed and

distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

#### **(a) Inspections**

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

#### **(b) Review of Compliance Information**

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

### **Enforcement Actions**

The underlying tenet of the compliance and enforcement program is that each violation deserves a response. The regions/states are expected to appropriately place SNC facilities that have not been acted on or returned to compliance on the exceptions list, and then address all exceptions. In addition to initiating new enforcement actions, regions should track compliance with consent decrees and with administrative orders and take all necessary actions to ensure continued compliance.

#### **Resolution of SNCs**

Regions/states should take timely and appropriate actions on all significant noncompliers. Any SNC not addressed in a timely and appropriate manner is an exception and should be targeted for federal enforcement. Specifically, in evaluating regional performance, OECA will look specifically at: the number of SNCs ; number (and %) addressed in a timely and appropriate manner; number (and %) exceptions; number (and %) exceptions addressed; and number remaining, with an explanation provided. Regions not able to commit to this should identify this as an "exception" in their MOA

submission and provide an alternative projection.

### **Program Leadership and Evaluation**

#### Data Entry/Data Management

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

## **5. FIFRA, TSCA, EPCRA CORE PROGRAM**

### **A. Program Focus and General Expectations for FY 2000/2001 for FIFRA, TSCA, EPCRA FEDERAL Activities**

The focus of the toxics and pesticides compliance and enforcement program for FY 2000-2001 is ensuring the public's right-to-know about chemicals in their environment. EPA and the public rely on the EPCRA Toxic Release Inventory for information on chemicals entering the environment. Other EPCRA requirements provide data which facilitate informed decision-making on exposure and local emergency planning. EPA must ensure that companies report data accurately and within required timeframes. The public's right-to-know is also encompassed in the TSCA regulatory programs for asbestos, PCBs, and lead based paint, as well as core TSCA. Facilities that are potentially subject to core TSCA provisions (TSCA sections 4, 5, 8, 12 and 13) number over 130,000 facilities. Existing and new chemicals manufactured and processed in these facilities may pose significant risks to workers and the environment. Core TSCA is unique in that it relies on companies' submission of data to the Headquarters program office for review and risk analysis, and most of the data is Confidential Business Information, the handling of which is statutorily controlled. Core TSCA also requires investigators with an understanding of chemistry and chemical reactions.

EPA and the public rely on pesticide manufacturers to provide accurate information about pesticides and their associated risks. Unregistered and ineffective antimicrobials, as well as products making false or misleading public health protection claims, pose a potential public health threat when the public is given inaccurate or misleading information which may lead to inappropriate choices. Farm workers using pesticides must be informed about exposure to pesticides that are used on agricultural crops and must be informed how to properly handle and apply pesticides. In addition, residents in urban and residential areas must be protected from illegal distribution, sales, or application of agricultural pesticides to control pests in urban and residential settings.

For FIFRA, the primary focus is on providing assistance/training/oversight to states/tribes carrying out FIFRA related enforcement under cooperative enforcement agreements. This includes issuing credentials as appropriate and providing training and grant oversight. Regions should refer to the Federal facilities section of this attachment (Section 8) for guidance on including Federal facilities in core program activities where applicable. EPA is responsible for enforcing data quality requirements

(GLPs), section 7 establishment registration and the submission of production data, import and export requirements, and the reporting of unreasonable adverse effects under section 6(a)(2) of FIFRA. States conduct product compliance inspections and may take the enforcement action or in some cases, EPA does, e.g., some WPS violations and product cases involving antimicrobials failing efficacy tests. Regarding enforcement of pesticide use provisions, the statute gives primary use enforcement responsibility to the states. EPA has a state oversight and training role, as well as a compliance assistance role.

### **Federal Compliance Assistance**

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

With regard to initiatives, these are collaboratively developed by Headquarters and the regions/states. Examples of recent compliance assistance initiatives include the Chemical Industry Sector Strategy's EPCRA project, EPCRA 313 reporting guidance for specific industry sectors (food processing, rubber and plastics, and the semiconductor industries), and Internet access to comparative TRI data from facilities in five sectors via the Sector Facility Indexing Project. The strategies for previous initiatives have also included a focused compliance assistance period with a recommended time frame for targeted assistance to ensure that the regulated community has the information which they need to comply. (Note: SFIP is a regional data analysis and targeting tool. The information in SFIP could be used by a region to provide "compliance assistance" to specific sectors by analyzing the relative quantities of data in the system and identifying the better facilities).

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

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

workshops/meetings/trainings; compliance tools developed and distributed, and on-site visits through the compliance assistance RECAP reporting form or alternatively through the compliance assistance tracking Lotus-Notes database (CATS).

### **Federal Compliance Incentives**

Regions should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy. Also, regions should work collaboratively with Headquarters on other compliance incentives involving multi-regional cases and/or sector approaches.

### **Federal Compliance Monitoring**

To maintain an effective compliance monitoring program, regions must allocate limited resources as effectively as possible, and trade-offs will have to be made. However, to the maximum extent possible, regions should target and conduct inspections and investigations (including show cause letters or subpoenas where appropriate) for:

EPCRA - EPCRA 304/CERCLA 103; EPCRA 313 - data quality; non-reporters; first-time reporters in July 1999

FIFRA - antimicrobials; labeling investigations, especially for WPS; Section 7; point-of-entry, dealers, or RUP dealers; urban pesticides

TSCA - lead based paint section 1018, and 402/404/406, asbestos - AHERA; asbestos MAP; PCBs; lead-based paint- 1018 and 402/404/406; core TSCA

Inspections are expected to be completed for every core program area identified above. With the exception of the TSCA lead based paint program, Headquarters expects regions to maintain inspections at FY 97 levels, assuming that the inspections have proven valuable in identifying areas of noncompliance and supporting enforcement efforts. If this is not the case, Headquarters should be informed in order to begin assessing why the inspections have not been effective. Regions should ensure inspection coverage in states without EPA enforcement cooperative agreements. Regions are expected to track and prioritize tips/complaints, and follow-up, as needed. ("Follow-up" means that the region needs to evaluate the tip/complaint to determine the appropriate next step, and either: 1) refer the tip/complaint to a state as appropriate and track it through resolution consistent with national guidance; OR 2) obtain additional information through federal investigation/show cause letter if necessary and issue appropriate federal action as appropriate.) Regions are also expected to follow-up on all referrals received from Headquarters and states.

With regard to the TSCA lead based paint program, there are several new or relatively new rules within this program which merit increased attention and an increased number of inspections. The regions should respond to all tips and complaints for potential violations of the section 1018 notification and disclosure rule, the section 402 abatement, training and certification rule, and the section 406

renovator and remodeler rule in those states without authorized programs. The regions should contact Headquarters if they need assistance with follow-up to tips and complaints. In those regions where most of the 402 program workload has been delegated to authorized states, the regions should continue to conduct targeted section 1018 inspections and increase their number of inspections. In those states without authorized 402 programs, regions should conduct 402 inspections of training providers (after March 1999) and inspections of work sites (after August 2000.)

### **Federal Enforcement Actions**

Regions are expected to respond to violations in a timely manner, and in accordance with national policy as contained in the individual program enforcement response policies. All self-disclosures and referrals should be evaluated and brought to closure in accordance with national policies. Regions should reduce the federal case backlog, if any (i.e. settle or litigate cases issued in years prior to FY 2000, and ensure investigation and issuance of appropriate action for any open tips/complaints/ referrals received by EPA in years prior to FY 2000). In their MOA, each region should indicate their intent with regard to how much of the Federal backlog they plan to reduce.

### **Program Leadership and Evaluation**

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

**DATA ENTRY:** It is critical that the regions enter all federal and state data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the TSCA, FIFRA, & EPCRA 313 National Compliance Data Base (NCDB). It is important for timely data entry to occur, for purposes of national analysis and publication of data as appropriate. Headquarters will be tracking data entry and discussing it with regional management. Regions should also enter data for EPCRA 301-312 into the National Enforcement Compliance Tracking and Reporting System (NECTAR) database.

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

**STATE COOPERATIVE AGREEMENTS:** OECA will provide a draft pesticides and toxics state enforcement cooperative agreement guidance for review and comment separately from the MOA guidance. This guidance, once finalized, should be followed by the EPA Regional offices when negotiating enforcement cooperative agreement commitments. For purposes of the MOA discussions, OECA is looking for each region's projections on the number of FIFRA, asbestos, lead 402, and PCB inspections which they will be using as the basis for negotiations with each of their state enforcement grantees. (Refer to Section 1., EPA-State Coordination on Workplanning and Oversight, for additional information).

## **6. AIR PROGRAM**

The CAA core program covers activities relating to Section 110 (SIPs/FIPs/TIPs), Section 183 (e) Consumer Product Rules, Acid Rain, Title V Operating Permits, Stratospheric Ozone Protection, NSPS, NESHAP/MACT, PSD/NSR requirements. Regions should refer to the Federal facilities section of this attachment (Section 8) for guidance on including Federal facilities in core program activities where applicable.

### **Compliance Assistance**

Regions, with the assistance of state, local, or tribal agencies, should provide cross-media information and technical assistance via seminars, on-site visits, mass mailings, Internet, etc. to the regulated community to ensure that businesses understand their regulatory obligations and know how to comply in the most cost-effective way. Regions should target the majority of their compliance assistance efforts toward small businesses who often have difficulty understanding our environmental regulations (e.g., dry cleaners, electroplaters, auto repair/body shops, HVAC technicians, etc.) This includes the use of the Clean Air Applicability Index to provide guidance on past determinations. Regions should work with their CAA Section 507 Small Business Assistance Programs in the delivery of compliance assistance.

Regional compliance monitoring personnel should be familiar with all compliance assistance tools (e.g., Compliance Assistance Centers, Sector Notebooks, inspection check lists, past root cause analysis, etc.) Regions should encourage applicable facilities and state, local, and tribal agency personnel to utilize the Compliance Assistance centers. All Centers have information on how to comply with the Clean Air Act. Four new centers opened in the fall of 1998, the Transportation Compliance Assistance Center (TRANSOURCE), the Local Government Environmental Assistance Network (LGEAN), the Paints and Coatings Center, and ChemAlliance.

### **Compliance Incentives**

Regions, with the assistance of state, local, and tribal agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

Regions, with the assistance of state, local, or tribal agencies, should strive to maintain an adequate compliance monitoring presence among all air programs. States, local, and tribal agencies will have primary responsibility for the delegated programs and EPA will be responsible for the non-delegated programs (e.g. asbestos and radionuclide NESHAPs, CFCs, certain NSPS and MACT), and for inspections of facilities on tribal lands. The emphasis for FY 2000/2001 is determining compliance through investigations, which may include in-depth record reviews (e.g., Title V, NSPS), fence-line

pollution measurements using UV-DOAS or other sampling method to identify sources that may present an imminent and substantial endangerment under CAA section 303, and on-site inspections. The regions should continue to review Excess Emissions Reports from CEMS (title V and acid rain sources); oversee performance tests and review test reports; respond to citizen complaints; review records/notifications; and make compliance determinations from information gathered as part of their compliance monitoring program. Specific goals are as follows:

1. Inspections. Inspections of all sources in the region should be at least Level II. Regions and states, local, or tribal agencies should use the Compliance Monitoring Strategy for targeting of sources and to determine the type and number of inspections they will conduct. Headquarters will use FY 98 and FY 99 numbers as a basis for determining a target inspection level in FY 2000 and FY 2001 with the input of regional, state and Headquarters representatives. In making this determination, Headquarters will account for its shift in emphasis towards investigations and away from inspections, by giving additional weight towards investigations.

Regions and state, local, or tribal agencies should continue to report into RECAP. In the MOA CAA inspection commitment chart, regions should give an estimate of the total number of state and federal inspections, and provide estimates for subsets of this total that include inspections of Title V sources, synthetic minor sources, Air Toxics sources, etc.

2. Investigations. Regions in cooperation with participating state, local, or tribal agencies should initiate or continue conducting an average of 2 in-depth investigations per state per year. (For further information refer to the PSD/NSR priority). Such investigations should include inspections, performance tests, and detailed document/data reviews as appropriate. Regions should estimate the number and type of CAA investigations expected in the MOA chart for CAA enforcement and compliance activities. For each investigation cited in the chart, regions should document the following items in their MOA submission:

- Types of violations sought
- Number of compliance inspections expected as part of the CAA investigations process

3. Source testing. Within the FY 98/99 period, the goal was to ensure that performance tests were performed on significant units for all environmentally significant pollutants at all major sources which had not been tested within 3 years of the time FY 98/99 MOA commitments were made. During the first half of FY 2000, regions should provide a report on the results of all tests conducted in accordance with this agreement. Alternatively, regions may simply have states include this information in AFS. For source tests conducted during FY 2000 and 2001, regions should ensure that states enter the appropriate test result information into AFS. Regions should estimate number of performance tests they or their state, local, or tribal agencies will require in the MOA chart for CAA enforcement and compliance activities.

4. Annual Compliance Certifications. By the end of FY 2000, the goal is for the regions to have reviewed compliance certifications for all Title V permit applications. Throughout FY 2000/2001,

regions should review all Title V annual compliance certifications they receive and report on the number of certifications reviewed. In addition, regions should give special scrutiny to Title V permits from sources that report full compliance, especially in the source categories targeted as priorities by OECA. Regions should carefully analyze 5% of the Title V permits they process each year, thus helping to target the investigations cited in goal #2, above. Regions should also compare the information in the compliance certifications to the compliance status reported for sources in AFS to ensure their consistency.

### **Enforcement Actions**

Headquarters expects that federal enforcement will be considered where states fail to take appropriate action. High Priority Violators should be addressed in accordance with the policy on Timely and Appropriate (T+A) Enforcement Response to High Priority Violations (HPVs), and the “no surprises” policy.. In addition, regions should take appropriate federal enforcement actions in situations where federal involvement could be particularly helpful in bringing the matter to a successful and environmentally beneficial resolution (e.g., a company with violations in more than one state, transboundary issues, particularly recalcitrant violators, etc.) or is essential to ensure fair and equal environmental protection mandated by law.

1) For all cases newly listed in accordance with the “Policy on T+A Enforcement Response to HPVs” during FY2000-01, regions should strictly adhere to the requirements of the Policy.

a) Regions should ensure appropriate enforcement actions are taken for violations reported on annual compliance certifications.

b) Regions should ensure appropriate enforcement actions are taken for synthetic minor violations.

2) For older cases, regions should ensure that 33 percent of all High Priority Violators, and all that are 3 years old or older, are addressed each year. Regions should work with their state, local, or tribal agency partners to implement the EPA policy on “Timely and Appropriate (T+A) Enforcement Response to High Priority Violations,” and identify major obstacles or conflicting state, local, or tribal priorities that impede achieving this goal.

3) Regions should evaluate and bring to closure 100% of any self-disclosures received by a Region, consistent with national policy.

4) Regions should reduce their Federal case backlog, if any (i.e. settle or litigate cases issued in years prior to FY 99, and ensure investigation and issuance of appropriate action for any open tips/complaints/referrals received by EPA in years prior to FY 99). In their MOA, each region should indicate their intent with regard to the extent of the proposed reduction (e.g. 75% or other percentage).

5) Regions should follow OECA Nationally Significant Issues (NSI) guidance in all cases as applicable.

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

### **Program Leadership and Evaluation**

As part of the core, regions will also be involved in program planning--strategic planning, MOA, budgeting, accomplishments reports, measuring results, etc., grants/contracts--negotiations/administration and oversight of contract/grants other than state/local/tribal grants, training-- conducting inspector training and personal development, and participating in reviews of SIPs/FIPs/TIPs, regulations, policies, guidance, delegations, etc. Regions should continue to communicate with communities (regulated and public) and respond to FOIAs, Congressionals, phone calls, press releases, etc. Headquarters has the following general expectations with regard to data entry, use of press releases, and assessment of state performance:

#### **1. Data entry**

Regions should require that states, local, or tribal agencies enter all necessary information into the AFS data system to provide accurate and timely information, especially regarding:

- inspection dates and compliance status after inspection, including date of violation, if appropriate
- enforcement actions (NOVs, orders, civil actions, criminal actions, etc) and date of action
- number of settlements and date settlement entered, including penalties accounting for economic benefit

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

#### **2. Press releases**

When appropriate, regions should utilize press releases to highlight regional activities that are not part of national initiatives, in order to promote further compliance. CFC and asbestos program enforcement should focus on ensuring deterrence through a few targeted, highly publicized enforcement actions, rather than a large number of inspections.

#### **3. State local or tribal performance assessment**

Negotiations and development of an agreed upon workplan with state, local, or tribal agencies

on enforcement activities, and assessment of their performance is critical if resources are to be used as effectively as possible. Regions should assess the adequacy of state, local, and tribal agency enforcement programs, particularly with respect to appropriate penalties for High Priority Violators and identification of High Priority Violators, including quarterly/annual reviews; file audits; oversight inspections, etc. Regions will be negotiating PPAs, compliance assurance agreements, SEAs or state/local/tribal grant workplans, which will ensure adequate state, local, and tribal enforcement in all delegated areas, and include federal roles and responsibilities. These negotiations should be consistent with the principles identified in the discussion of joint planning and priority setting and worksharing identified in this guidance.

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

EPA is committed to ensuring that hazardous wastes are managed in manners that are protective of human health and the environment. Agency targeting, compliance monitoring, and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. For example, the earlier identified RCRA priority – permit evaders – will include illegal (e.g., dilution) hazardous waste treatment practices, and wastes that are no longer exempt under the Bevill amendment. Additionally, this focus will include companies that have sought to include themselves within the ambit of various exceptions or exemptions to the RCRA Subtitle C system but failed to meet the terms of those exceptions or exemptions. These efforts must and will ensure that RCRA-regulated facilities properly identify, manage, and dispose of their waste in accordance with applicable environmental laws.

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. These state-federal compliance assurance and enforcement activities will provide a credible deterrent to polluters and provide incentives to achieve a greater level of compliance with environmental laws and regulations. These activities will include traditional and “beyond compliance” approaches (e.g., where appropriate, settlement agreements with supplemental environmental projects that reduce or eliminate emissions or discharges of certain toxic materials). Additionally, state and federal activities facilitate the accomplishment of GPRA and EPA Strategic Plan-related commitments. Regions

should refer to the Federal facilities section of this attachment (Section 8) for guidance on including Federal facilities in core program activities where applicable.

### **Compliance Assistance**

Compliance assistance activities should focus on newly regulated handlers, handlers subject to new regulations, small businesses in the priority industrial sectors (i.e., metal services entities), and other small businesses with compliance problems. No performance goal is provided. However, a report should be submitted at the end of the year for these activities. Additionally, appropriate data should be entered into RCRIS (e.g., use the code “CAV” for compliance assistance visits).

## Compliance Incentives

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy. Additionally, appropriate data should be entered in RCRIS (e.g. use the code "FSD" for facility disclosures).

## Compliance Monitoring

The RCRA enforcement core program includes the compliance monitoring activities set forth in Tables I and II (pages 26 and 27). Both state and federal compliance monitoring activities may be required in implementing the activities in Table I (i.e., maintaining the annual level of generator inspections). To facilitate accomplishment of Agency FY 2000/2001 priority activities, achievement of the level playing field principle and oversight of state compliance assurance and monitoring activities, EPA regions should maintain a federal presence in the core program, conducting the compliance monitoring activities set forth in Table II. The regions (in consultation with OECA) may conduct fewer or additional compliance monitoring activities if it is determined that such activities are warranted (based on the criteria listed below).

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

- < "Feedback" received from external and internal stakeholders (i.e., environmental justice entities, Inspector General findings, citizens and community groups) regarding the quality of federal and state enforcement programs;
- < Use (and frequency) of appropriate sanctions ( e.g. administrative orders) to create a deterrence;
- < The level of compliance monitoring activities needed to create a credible deterrent;
- < Abilities of state and EPA enforcement programs to identify violations and violators of concern and take timely and appropriate responses to non-compliance in accordance with criteria set forth in the March 1996 RCRA Enforcement Response Policy;
- < Trends in compliance shown by performance measures and other indicators (i.e., SNC rates, rates of compliance) relative to national and regional levels;

- < The degree to which a given enforcement program utilizes integrated (i.e., multi-media) strategies in determining priorities and implementing its compliance assurance and enforcement activities;
- < “Feedback” from joint or “side-by-side” (federal and state) compliance monitoring activities;
- < State environmental program review/audit findings and conclusions;
- < Current regional compliance assurance and enforcement commitments reflected in state-EPA workshare agreements;
- < EPA activities in fulfillment of National EPA priorities; and
- < Other criteria (i.e., state priorities relative to EPA priorities).

Table I - Combined State and Federal Core Activities

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

- 1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility’s ground water monitoring system is adequately designed and installed, an O&M inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems; significant changes to ground water monitoring system; and actual or suspected changes in local ground water regimes.
- 2 States with a relatively small universe should inspect a higher percentage of its universe.
- 3(\*) States and regions should determine the appropriate levels.

States and regions should note that expectations relative to large quantity generator inspections have changed. This is due to several factors. First, we believe (e.g., based on BRS data) that the actual universe is significantly less than we previously determined (when the previous expectations (8%) were developed). Additionally, states and regions are identifying significant issues at large quantity generator facilities- issues which warrant a greater focus on these types of facilities.

Table II - Federal Core Activities

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

1 Ground water monitoring inspections (CMEs) should be conducted at any new or newly regulated facilities. Once it is determined that a given facility’s ground water monitoring system is adequately designed and installed, an O&M inspection may become the appropriate ground water monitoring inspection. More frequent CMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate ground water monitoring systems; significant changes to ground water monitoring system; and actual or suspected changes in local ground water regimes.

### Enforcement Activities

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

In addition, Regions should take appropriate federal enforcement actions in situations where federal involvement is necessary (i.e., to address public health and environmental concerns, to level the playing field, and to achieve National priorities and initiatives, addressing environmental justice concerns). Federal enforcement could be particularly helpful in bringing complex matters to a successful and environmentally beneficial resolution (e.g., illegal recycling violations, Bevill issues, a company with violations in more than one state, trans-boundary issues, particularly recalcitrant violators, etc) or is essential to ensure fair and equal environmental protection mandated by law.

- b) Evaluate and bring to closure in a timely manner 100% of any self-disclosures received by a region consistent with national policy.
- c) Significantly reduce any federal case backlogs (i.e. settle or litigate cases issued in years prior to FY 2000, and ensure investigation and issuance of appropriate action for open tips, citizen complaints, and/or state referrals received by EPA in years prior to FY 2000). In their draft MOA, each region should indicate their intent with regard to the extent of the proposed reduction (e.g. 75% or other percentage).
- d) Follow OECA Nationally Significant Issues (NSI) guidance in all cases as applicable.
- e) Finally, we expect that the regions will invest compliance monitoring resources to support efforts to develop enforcement actions against significant non-compliers with violations in more than one state.

### Program Leadership and Evaluation

DATA ENTRY: The following RCRIS data elements are still considered core to the RCRA enforcement program and must be entered into RCRIS in a timely manner by both federal and state enforcement personnel to accurately reflect their activities:

- 1) evaluation core elements  
Please note, the regions are reminded of the importance of entering and/or updating facility SIC code information and the SNC determination in this segment.
- 2) violation core elements
- 3) enforcement core elements

STATE OVERSIGHT: The level playing field principle requires that individual facilities or industrial sectors not be allowed to operate illegally outside of program requirements based on different interpretations of the law. EPA, through oversight and other federal compliance assurance and enforcement activities) will play a leadership role in implementing of this principle. Variations in policy interpretation and program implementation which undermine this principle should be identified and addressed in a timely and appropriate manner. Regions are expected to ensure that quality RCRA enforcement and compliance programs are maintained through traditional state oversight activities, workshare agreements with states, and independent EPA compliance assurance and enforcement activities.

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

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

### **Compliance Assistance**

States and EPA have done extensive outreach to UST owners and operators over the past 10 years. Additional investments in outreach--except in conjunction with compliance monitoring--are likely to have marginal value (except on Indian lands and for low enforcement priority entities). Regions should encourage state and local governments to utilize all of the Compliance Assistance Centers, as appropriate. All centers have information related to the UST program for their particular type of business. Note in particular four new centers that opened in the fall of 1998, the Transportation Compliance Assistance Center (TRANSOURCE), the Local Government Environmental Assistance Network (LGEAN), the Paints and Coatings Center and ChemAlliance.

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

## Compliance Monitoring

Regions should work with states to assure compliance with UST requirements. EPA efforts should be focused on states where compliance rates are lowest or states' compliance monitoring and enforcement programs are a concern. EPA activities should focus on the requirements for protection against spills, overfills, and corrosion, leak detection and financial assurance. Generally, Regions should promote and enforce compliance with UST requirements on Indian lands.

### Performance Expectations

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

## State Support and Oversight

Regions will work with states to help them strengthen their enforcement programs, increase their field presence, and improve their collection and management of compliance and enforcement data.

## Enforcement Actions

Regions should take prompt and effective action on UST violations discovered, particularly those most directly related to protection of health and the environment. Generally, administrative, or judicial complaints or orders should be issued.

## **8. FEDERAL ACTIVITIES PROGRAM**

The Federal activities core program for FY 2000/2001 is built around the following major areas:  
NEPA:

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

International:

- o -- Participate in meeting the multimedia objectives for enforcement and compliance cooperation listed in the U.S./Mexico Border XXI plan. (Region VI and Region IX).
- o -- Participate in efforts to improve colonias environmental conditions. (Region VI).
- o -- Participate in enforcement and compliance cooperative efforts relating to transboundary compliance monitoring on the U.S. borders for hazardous waste and CFCs. (All regions).
- o -- Participate in focused efforts in conjunction with Mexico and Canada to enforce domestic laws controlling selected chemicals (e.g., PCBs, mercury). (All regions).

The NEPA activities are based on the 1996 Environmental Review and Coordination (ER&C) Workload Model, against which regions were given resources to carry out these programs. The International Program commitment requests are tied to resources accorded the Agency for implementation of the NAFTA environmental side-agreement, and the U.S.-Mexico Border XXI agreement.

The Federal activities programs are included under Goal 9, Objective 1 (Ensure Federal Actions are Consistent with Goals) and Objective 2 (Enforcement and Compliance with Other Countries).

Objective 1 (Ensure Federal Actions are Consistent with Goals)

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

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

### **Performance Goals**

Regions should review 100% of major proposed Federal actions subject to NEPA and successfully mitigate 70% of identified significant environmental impacts (i.e., those requiring EPA follow-up) through interagency negotiations. Regions should review and document 100% of water treatment facility and New Source NPDES permits subject to NEPA and ensure projects meet all water quality requirements.

Objective 2 (Enforcement and Compliance with Other Countries)

International Programs: The majority of requested commitments fall to Regions VI and IX for U.S. Mexico border work in connection with Border XXI and NAFTA-related work. The Agency has announced an Agency-wide Multimedia Strategy for Priority Persistent, Bio-accumulative and Toxic (PBT) chemicals. OECA's support for the PBT initiative will include support for the commitments of Canada, Mexico and the U.S. to address the Sound Management of Chemicals (SMOC) under the North American Agreement for Environmental Cooperation (NAAEC). This work will begin with a focus on PCB's and mercury, and expand to other chemicals in accordance with priorities established in the SMOC process.

## **9. FEDERAL FACILITIES PROGRAM**

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

### Compliance Assistance

- S continue to target compliance assistance activities at DOI facilities and other Civilian Federal Agencies identified in FFEO targeting guidance and
- S continue to provide compliance assistance efforts at all Federal agencies through meetings, conferences, publications, training; and
- S continue to advocate environmental management reviews for Federal facilities and conduct at least three EMRs per fiscal year (assuming three facilities volunteer for EMRs and that travel and contract funds, if necessary, are available).

### Compliance Incentives

Regions should work with their Federal facilities to promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by regulatory agencies for enforcement investigation or response. Regions should consider and follow-up on, as appropriate, disclosures submitted under the OECA audit policy and small business policy. Regions should also actively support Project XL and other reinvention initiatives with Federal agencies.

### Compliance Monitoring

- S have a process for identifying/targeting/inspecting and otherwise responding to violations at Federal facilities;
- S continue to conduct at least two multi-media inspections each fiscal year and include a CAA, SDWA, and UST component in those inspections;
- S increase media program inspections at Federal facilities in those areas where EPA has new or clarified enforcement authorities against Federal facilities (e.g., SDWA, CAA, UST and TSCA Title IV);
- S continue to aggressively seek reimbursement for inspection costs of annual RCRA inspections at Federal TSDs;
- S include RCRA 6002 inspections at Federal facilities in accordance with future guidance to be issued by FFEO and report results of 6002 inspections to FFEO;
- S continue to include Federal facilities as part of strategies to address media-specific MOA priorities, including significant Federal facilities located in place-based priority areas or within other significant sectors; and
- S conduct EPCRA inspections at Federal facilities to determine compliance with EPCRA sections 301 through 313, per the mandate of E.O. 12856.

### Enforcement Actions

- S continue to lead and support enforcement negotiations, litigation and oversight at Federal facilities; and
- S utilize as appropriate, any new or clarified penalty authorities (e.g., CAA, SDWA and

any other new authorities) and encourage referrals of cases from States that do not have full enforcement authority (e.g., CAA and UST).

### **Program Leadership and Evaluation**

- S continue to utilize and efficiently manage and track Federal facility resources, particularly FTE usage and extramural funding provided by FFEO/HQ;
- S continue to actively utilize and maintain IDEA/WIN;
- S continue to provide quarterly environmental compliance status reports to the Federal agencies in their Region and assist in resolving discrepancies;
- S continue to provide RECAP information to FFEO/HQ; and
- S review and comment upon, as appropriate, high priority FEDPLAN projects specified in guidance from FFEO.

## **10. MULTIMEDIA PROGRAM**

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

### **Compliance Assistance**

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

### **Compliance Incentives**

Regions, with the assistance of state/local agencies, should promote OECA's compliance incentive policies (e.g. small business policy, audit policy, etc.) to encourage the regulated community to voluntarily discover, disclose and correct violations before they are identified by

regulatory agencies for enforcement investigation or response. Regions should consider and follow-up

on, as appropriate, disclosures submitted under the OECA audit policy and small business policy.

### **Compliance Monitoring**

The multimedia program will rely on the compliance monitoring efforts in existence for each media program. However, each region's multimedia targeting strategy and operational plan (see paragraph four below) should establish protocols for coordinating multimedia investigations and actions among the individual media programs. Headquarters hopes to assist the regions in promoting a process-based approach as well as a more targeted and efficient approach to multimedia inspections in general.

Participation in cases developed under the NESS protocols (see paragraph b below) could entail the dedication and possible reprogramming of compliance monitoring resources.

### **Enforcement Actions**

#### (a) General Approach

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

Against single facilities: entire industrial processes at a facility may be examined as a whole;

Against entire companies, where violations of different statutes that occur at various facilities indicate ineffective corporate-wide management of environmental compliance; and

Geographically based enforcement efforts arising from a comprehensive multimedia analysis of the environmental problem(s) in a given area (enforcement activities resulting from this analysis may be single or cross-media).

Regions will be expected to continue to develop and refine their multimedia targeting strategy and operational plan for initiation of multimedia enforcement activities. Elements of this plan should include projected multimedia inspection and case development training, projected numbers of multimedia inspections and projected numbers of multimedia cases. Use of a multimedia checklist is not considered to be a multimedia inspection, but a tool for identification of potential multimedia targets. Each region is expected to use 15 percent of its compliance monitoring and enforcement resources toward multimedia inspections and subsequent actions. If this is not the case, the region should identify this as an exception and indicate what it expects to do. This resource commitment should not entail a significant reprogramming of resources, but rather a greater effort to coordinate single media activities to result in multimedia actions. It is anticipated that the elements of the plan and resource commitment will generate significant administrative and/or judicial multimedia enforcement actions in FY 2000. (Note: The 15 percent figure is meant to include a wide array of multimedia activities, including participation in the NESS-derived cases as discussed below. We hope that by specifying a precise figure in this document we will generate a meaningful discussion of resource use and coordination for

multimedia efforts.)

(b) National Enforcement Screening Strategy (NESS)

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

### **Program Leadership and Evaluation**

(a) Data Entry/Management

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

(b) Regional-State Coordination

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

## **11. ENVIRONMENTAL JUSTICE PROGRAM**

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

these activities are coordinated to more effectively address the needs of impacted communities. To ensure that the goals of environmental justice are accomplished, regional enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement/compliance activities. In particular they should ensure that:

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

### **Compliance Assistance**

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

### **Compliance Monitoring**

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

diminish any excess risk which may be associated with areas that have a high concentration of industrial activity and/or toxins relative to the resident population.

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

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

### **Enforcement Actions**

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

### **Program Leadership and Evaluation**

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

## **12. TRIBAL PROGRAM**

EPA has the responsibility to directly implement its programs in Indian country, unless and until tribal governments have received that authority. Given that responsibility, the regions will continue to make sure that all the elements of the core enforcement and compliance assurance program are implemented in Indian country. During FY 2000/2001, the regions should make every effort to increase their presence in Indian country, especially in the areas of compliance assistance, and enforcement, where warranted, against federal, private and tribal facilities.

During the second half of FY 1999, OECA expects to finalize its Strategic Plan for Indian country. The strategy, which will be issued under separate cover, identifies the activities that OECA and the regional enforcement programs will take to implement the enforcement and compliance assurance program over the next five years in order to protect human health and the environment in Indian country. The strategy will emphasize compliance assistance, compliance incentives, and enforcement to carry out these goals.

Some of the specific elements of the strategy– which has both short term and long term components– will be implemented by OECA Headquarters, some by the regions, and some will be

implemented jointly by both Headquarters and the regions. Here are the priority activities that the regions should be undertaking in FY 2000/2001 to implement the strategy:

**Assessing Non-Compliance in Indian Country:** Complete and accurate information about the universe of regulated entities and their compliance status in Indian country is necessary for OECA and the regions to successfully protect the environment and enhance compliance. The goal is to accurately and comprehensively assess the compliance status of facilities in Indian country and to define and target priority areas of noncompliance. To help realize this goal, the regions will develop their own inventories of public and private facilities in Indian country during FY 2000/2001.

**Compliance Assistance and Capacity Building:** OECA's compliance assistance and capacity building efforts in Indian country are designed to provide Federal facilities, non-tribally-owned or operated facilities, and tribal governments that own or manage regulated facilities with the information and support necessary to maintain compliance. Consistent with EPA's 1984 Indian Policy, OECA and the regions will utilize compliance assistance as the initial means of resolving non-compliance and maintaining compliance on the part of tribally-owned or managed facilities, although the Agency will take enforcement actions when necessary if compliance assistance fails to correct violations at tribally-owned facilities in a timely fashion. To help implement this approach, during FY 2000/2001, the regions will work with their tribal governments to assess both short-term and long-term tribal compliance and technical assistance training needs, using the Tribal Environmental Agreements (TEAs) or other process to develop the information.

**Compliance Monitoring and Enforcement:** Until tribal governments are delegated the authority to implement enforcement programs, EPA will take enforcement actions in Indian country under its direct implementation authority against federal facilities, privately-owned and tribally-owned facilities where warranted. In FY 2000/2001, the regions will continue to inspect identified high-priority regulated facilities located on or near Indian country, as those priorities are specified in TEAs or the MOA. The regions also should give priority attention to working with OECA Headquarters to implement the tribal credentials program for interested tribal governments. (Note: during the second half of FY 1999, OECA will issue guidance on the Enforcement Principles Outlined in the 1984 Indian Policy, which will address the issue of potential enforcement against tribally-owned facilities in more detail).

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

#### **Criminal Enforcement**

Criminal enforcement serves the following purposes:

- addresses conditions which may present imminent and substantial endangerment to human health or the environment;
- prevents future environmental harm from occurring;
  
- deters others from future similar illegal behavior
- levels economic playing field.

In order to achieve these purposes, each Program Office in the Region will continue to cooperate closely with the Criminal Investigation Division (CID) to identify, investigate and prosecute criminal violations of Federal environmental laws, with a particular emphasis on identifying criminal activity which victimizes environmental justice communities. In order to promote cooperation between the region and CID, the region should:

### **Enforcement Actions**

Identify leads appropriate for criminal investigations, and submit them for the regional screening process.

Assist CID in identifying, targeting, and prosecuting persons who provide or maintain false data in areas within EPA's jurisdiction, such as false water monitoring reports, etc.

Provide technical support to CID investigations, providing in-house personnel as witnesses when necessary, and maintain legal and staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crime.

Ensure that the January 12, 1994 Memorandum on the Exercise of Investigative Discretion document is distributed to all ORC attorneys, and ensure that the content of this document is incorporated into training sessions on criminal enforcement which are periodically held for ORC attorneys and program enforcement staff.

Provide regional support for multi-media prosecutions of alleged criminal violations.

### **National Enforcement Investigations Center**

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

Request NEIC support through the planning process established by OECA in consultation with NEIC.

### **National Enforcement Training Institute**

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

Conduct training of EPA, state, and tribal personnel as approved through the NETI course planning and delivery process.

## REPORTING FORMS FOR FY 2000/2001 PROJECTIONS

-- NPDES/PRETREATMENT

-- DRINKING WATER SNC

-- RCRA

-- TOXICS

-- EPCRA

-- AIR

-- FIFRA

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

NPDES/PRETREATMENT INSPECTIONS

This measure tracks, against semi-annual targets, the number of inspections of major NPDES facilities; Class I facilities receiving sludge management inspections; and pretreatment POTWs receiving compliance inspections.

Regions and states must maintain an effective inspection program, and the strategy for ensuring this in every state should be defined in the MOA. It is an Agency goal to provide 100% coverage of all major NPDES facilities and POTWs with approved pretreatment programs or equivalent coverage of a combination of major and priority minor facilities annually (the inspection year covers the period July 1 through June 30). Regions should focus inspections in Clean Water Act priority areas as defined in the MOA. Regions may shift a portion of their total inspection resources from major to minor facilities, particularly in priority watersheds or facilities discharging to impaired waters (e.g., fish advisories, shellfish bed or beach closures, drinking water sources). Since an inspection at a major facility generally requires more resources than an inspection at a minor facility, inspection tradeoffs, that is the number of minor facilities substituted for major facilities, should be a 2:1 ratio or greater. This ratio is based on previous workload models which averaged the amount of resources needed to conduct major and minor inspections. Additionally, as we focus on newer sources, such as SSOs, or areas identified in the Clean Water Action Plan, such as beach closures, minor sources will be an important component of our inspection program. In addition, regions who are planning to conduct sludge inspections at the expense of other CWA core activities should provide a rationale for their investment in sludge inspections. Regions should report sludge inspections, where applicable, on the MOA form as part of the end-of-year report. Regions proposing to shift inspection resources from majors to minors must ensure that the necessary facility information and inspection data is entered into PCS, either by the region or state, in order to receive "credit." It is very important that minors data be reported into PCS to reflect our activities, show results and implement the Clean Water Action Plan. Beginning in FY 2000 we will rely solely on minor data entered into PCS to evaluate and report results.

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

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

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

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

For further information on this measure, contact Julie Tankersley (202/564-7002) for NPDES inspections and John Dombrowski (202/564-7036) for pretreatment inspections.

### FY 2000/2001 NPDES AND PRETREATMENT INSPECTION PROJECTIONS

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

\* Universes and projections should be broken out by federal and state-by-state.

\*\* For Region X, the universe number provided should exclude major placer miners.

\*\*\* For minors provide an annual projection number.

### Pretreatment Inspections

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

Note: This measure requires semi-annual projections for NPDES Inspections and Pretreatment Inspections. Projections for 4th quarter should be cumulative numbers. Projections are not required for Sludge Inspections. Semi-annual reporting is required for NPDES, Pretreatment and Sludge Inspections.

### DRINKING WATER FIXED BASE SNC/EXCEPTIONS PROJECTIONS

This measure requires each region to negotiate projections for the number of Drinking Water SNCs/Exceptions off a fixed-base list, which will be appropriately addressed, either by state or federal action, or returned to compliance by June. This is the same projection that was asked for in the prior year MOAs.

We are employing a similar process for negotiating the projections as we have used in those prior years and as was set out in the MOA guidance. As in prior years, separate projections should be negotiated for the Surface Water Treatment Rule (SWTR), Microbiological/Turbidity (M/T), and for Chemical/Radiological (C/R) SNCs and Exceptions. In general, if a state has a relatively small number of SNCs/Exceptions, we expect the state and/or region to commit to address 100% of the systems. If the regional projection for SWTR, M/T, and C/R (other than lead/copper rule) is

less than 100%, an explanation of which systems (by name) must be provided explaining why the system(s) will not be addressed. It is possible that we will again in FY 2000/2001 have large numbers of lead/copper rule SNCs. If this is the case, we are prepared to negotiate projections using the same guidance we used in FY 1998/1999, i.e. 100% of the large and medium systems and at least 85% of the small systems. A projection of anything less than 85% must be accompanied by a justification (not necessarily system-specific) explaining why the remainder will not be addressed. Please remember that in order to be counted towards the projection, the enforcement action must be taken or the return to compliance must occur by June. Note that as in prior years, actions taken or returned to compliance reported in the fourth quarter of FY 1998 also count towards your projections.

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

If you have any additional questions regarding the data and the reporting, please contact Sue Pohedra (202/564-3512) or Karin Ashe (202/564-4121), both of the Enforcement Planning and Targeting Division within Office of Compliance. If you have questions on this process or specific questions on how to deal with an individual system please contact Betsy Devlin (202/564-4054) in the Office of Regulatory Enforcement or Kate Anderson in the Office of Compliance (202/564-4016).

**RCRA Regional Projected Compliance Monitoring Activities - FY 2000/2001**

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

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

**A. Regional Priority Inspection Projections**

## 1. Instructions for completing Table 1

- ! For the region, indicate the number of facilities where EPA activities are *projected* to occur in the fiscal year 2000. Inspections projected should include ALL RCRIS evaluation types, except for the SNC determinations, SNN and SNY. Compliance assistance activities (e.g., outreach, response, on-site assistance, other) should use the appropriate codes in the column provided.
- ! To avoid double counting between priorities, use the hierarchy of permit evaders, petroleum refining, metal finishing. For all other activities, list in order of importance to the regional RCRA program and use that as the hierarchy to count compliance monitoring activities once.
- ! To avoid double counting of facilities, use this hierarchy to count compliance monitoring activities once, e.g. an inspection planned for an LDF with an incinerator, credit one activity to the Incinerator column.
  - 1. Federal Facility (See 1. Special Factors)
  - 2. State and Local TSDF (3007(d))
  - 3. Incinerators
  - 4. Boilers and Industrial Furnaces
  - 5. LDFs

- 6. TSFs
- 7. Large Quantity Generators (LQGs)
- 8. Small Quantity Generators (SQGs)
- 9. Non-notifiers
- 10. Transporters

**RCRA Regional Projected Compliance Monitoring Activities - cont.**

Facility Type	Federal Facility	State & Local TSD 3007(d)	Inc	BIFs	LDFs	TSFs (non-combustion)	LQG	SQG	Non-Notifiers	Transporters	Other (used oil, tips, etc.)	Compliance Assistance Activities	TOTALS
Priority													
Permit Evaders													
- Waste-derived fertilizer													
- Bevill													
- Foundries													
- Other													
Petroleum Refining													
Metal Finishing													

Other Priorities (please list in order of importance to the RCRA program)												
TOTALS												

**RCRA Regional and State Projected Core Program Compliance Monitoring Activities - FY 2000/2001**

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

! Indicate the number of facilities where regional and state activities are *projected* to occur in the fiscal year 2000. Regions should indicate the number of regional inspections that will be conducted in each state. Inspections commitments/projections should include ALL RCRIS evaluation types, except for the SNC determinations, SNN and SNY.

! To avoid double counting of facilities, use this hierarchy to count compliance monitoring activities once:

1. Federal Facility (See 1. Special Factors)
2. State and Local TSDf (3007(d))
3. Treatment, Storage, and Disposal Facilities (TSDFs)
4. Large Quantity Generators (LQGs)
5. Small Quantity Generators (SQGs)
6. Other (Facilities other than those listed in 1-5 above; i.e., non-notifiers transporters, used oil, etc.)

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

**UST Inspection Projections**

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

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

**1. Special Factors for Disinvestment from Statutorily Mandated Inspections at Federal Facilities.**

The Federal Facility Compliance Act (1992) amended RCRA Section 3007 (c) and requires EPA to conduct annual inspections at all Federal facilities. This has been interpreted as the Federal Treatment, Storage and Disposal Facilities (TSDFs) universe. Currently, there are 332 Federal TSDFs which should receive annual inspections by EPA or authorized states.

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

- 1) Federal TSDF has received annual EPA/state inspection since FY 92.
- 2) Federal TSDF is not a High Priority Violator (HPV).
- 3) Federal TSDF has no open or unresolved enforcement actions.

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

**TSCA INSPECTION TARGETS:**

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

**PRIORITY ENFORCEMENT AND COMPLIANCE ACTIVITIES UNDER FY 2000 MOA**

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

**EPCRA INSPECTION TARGETS:**

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

**PRIORITY ENFORCEMENT AND COMPLIANCE EPCRA ACTIVITIES**

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

Regional Federal					
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**CLEAN AIR ACT INVESTIGATION AND INSPECTION PROJECTIONS**

Please fill in the following table to reflect regional and state-by-state investigation projections for the air program. Note that the total number of investigations should equal the sum of all other investigation categories.

Investigation Type/ Region and State	Total Number of Investigations	NSR/PSD	Air Toxics/MACT	Metal Services	Petroleum Refineries	Other
Region						
State-by-State						

Please fill in the following table to reflect Regional and state-by-state inspection projections for the air program. Note that the total number of inspections should equal the sum of all other inspection categories.

Inspection Type/ Region and State	Total Number of Inspections	Title V Compliance Certifications	% of Universe	Synthetic Minor Inspections	% of Universe	Number of Source/ Compliance tests observed	% of Universe	Number of Inspections that are part of an Investigation
Region								

State-by-State								

**FIFRA INSPECTION TARGETS:**

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

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

### Resource Information

The attached resource charts are very similar to the charts completed as part of the FY 99 MOA Update. The charts are organized by goal and objective and sub-objective and then cross-walked to the media program elements. We are asking regions to complete the charts for the enforcement and compliance resources under Goal 9 and Goal 5 of the Agency Strategic Plan. As regions start work on these charts there are several points to keep in mind:

1. Unlike the FY 99 charts, the information requested does not go to the program component level (for example, compliance monitoring or program leadership and evaluation) under each sub-objective. For FY 2000, resource data is only shown at the goal/objective/and sub-objective level. The charts also only request FTE data, not extramural dollars.

2. There are three columns on the charts:

--the first column shows the FY 99 Operating Plan. These numbers are the official FY 99 numbers developed last fall. While close to the proposed FY 99 numbers in the MOA resource charts provided last summer as part of the MOA Update guidance, there are some differences.

– the second column is from the regional MOA submission. These are the numbers we are carrying forward into FY 2000 planning and budgeting.

– the third column is blank and regions are to input their data into this column.

3. As regions work through their resource projections, they should review a report from the budget system called the Budget Object Class Report, which shows how the regions have assigned resources according to program responsibility code (PRC). This report shows regional resources also at the goal/objective and sub-objective level. These are the official Agency numbers and will be the basis for the FY 2000 Operating Plan, so we encourage regions to try to reconcile the numbers between the MOA and the budget system to reduce confusion.

4. The goal 9 charts for each region are included in this MOA guidance. Each region is receiving a disk containing its resource chart as part of this MOA guidance. The goal 5 charts will be sent out under separate cover within the next month.

**Headquarters Support****National Priorities****CWA/Wet Weather**

## OC/CCSMD

- SSOs: In FY 1999, OECA/OC will be developing a series of inspection tools for EPA compliance inspectors to assist them in evaluating wastewater treatment plants and collection systems that may be experiencing sanitary sewer overflows (SSOs). The tools include 1) a guidance document and 2) a checklist for evaluating all aspects of wastewater treatment plant and collection system Management, Operations, and Maintenance (MOM) programs to determine compliance.
- Storm water: OECA/OC will be developing the compliance monitoring tools which will include a series of inspection checklists for the Storm Water Management Phase I regulations.

## OC/AgED

- AFOS: The EPA/USDA Joint AFO Strategy was issued in draft on September 17, 1998. The final Strategy should be issued in 1999. This establishes a national performance expectation for all AFO owners as well as actions USDA and EPA plan to take.
- CAFOS: OECA issued a national CAFO Sector Strategy, including a CAFO implementation Plan, in 1998 calling for increased inspections and targeting of compliance assistance and enforcement activities at CAFOs.
- CAFOS: OC/AgED will continue to provide regions with CAFO inspector training.
- CAFOS: OC/AgED will provide CAFO targeting information.

## ORE/WED

- Storm water: The guidance on storm water Phase I regulations and the integration of Storm water Phase I/Phase II is expected to be available to the regions before FY 2000. OECA/ORE developed a Storm Water Enforcement Strategy that focuses on Phase I dischargers. After the Storm water Phase II regulations are promulgated, EPA anticipates developing a Phase II compliance and enforcement strategy.

**OC/CCSMD**

- OC will work with OGWDW to provide appropriate compliance assistance materials on the new microbial rules for distribution on the Local Government Environmental Assistance Network (LGEAN).
- OC will make grant money available to selected states to implement peer review programs for small communities related to drinking water, as well as other compliance issues, modeled after Region IV's program.

**CAA/ New Source Review/Prevention of Significant Deterioration (NSR/PSD)**

**OC/CCSMD/EPTDD**

- OC/EPTDD and OC/CCSMD will work with regions to help identify chemical facilities that had modifications but did not receive appropriate federal or state approval.
- OC/CCSMD and OC/EPTDD will work with regions to help develop an integrated initiative (investigations, compliance assistance, or enforcement) to satisfy the NSR/PSD priority.

**Air Toxics**

**OC/METD**

- OC/METD will continue to participate in the MACT regulatory workgroups for the industry sectors covered by the Division to ensure that the standards have adequate monitoring, record-keeping, and reporting provisions, and are enforceable.
- OC/METD will continue to provide assistance to the regions in preparing applicability determinations, and responding to alternative monitoring requests under the NESHAP and MACT programs.
- OC/METD will provide assistance to the regions in developing implementation materials for the MACT program as resources allow.

**OC/CCSMD**

- To the extent the information is available, OC/CCSMD will provide information on facilities to help regions determine which MACT to adopt.

- Compliance Assistance Tool: OC/CCSMD will develop a comprehensive CAA environmental audit protocol including all the requirements that impact the chemical sector POTWs. To the extent that CCSMD has resources available, assistance will be provided to regions to develop other compliance assistance tools and an approach to share such tools with other regions.

OC/CCSMD will provide the following in support of the Pharmaceutical MACT Standard:

- OC/CCSMD will coordinate with the Office of Air Quality Planning and Standards (OAQPS) to develop an on-line “expert” rule system to help facilities comply.
- OC/CCSMD will develop a Plain English guide for the rule (Pharma Tool) to help facilities comply.
- OC/CCSMD will coordinate with Region 2/ Carribean Office and PR EQB to perform pollution prevention assessments at pharmaceutical facilities and provide pollution prevention recommendations. This activity will satisfy an Agency approved CBEP project. These case studies will be included in the Pharma Tool.
- To the extent that resources are available to develop tools, and the MACT selected applies to the chemical sector, OC/CCSMD/CIB will consider Air Toxics regional compliance assistance requests.

OC/CCSMD will provide the following in support of the Hazardous Organic NESHAP (HON):

- OC/CCSMD will conduct inspector training at satellite locations for the waste water components of the regulation (effective in April 1999).
- OC/CCSMD will provide oversight to states for their use of \$125K in state grant funds to conduct basic HON training.

OC/CCSMD/EPTDD

- OC/CCSMD will coordinate with EPTDD to identify industrial organic facilities that are (known) and could be (unknown) subject to the HON for regional inspections.
- OC/CCSMD and OC/EPTDD will work with interested regions to develop an action plan for the MACT(s) that is adopted by the region.

## **RCRA Permit Evaders**

**OC/EPTDD**

- Strengthening the RCRA Hazardous Waste Import Process: EPTDD will continue development of the Waste International Tracking System (WITS), a PC-based, LAN-served import data system.

**OC/METD**

- OC/METD will provide assistance to ORE/RED in developing the strategies for identifying permit evaders in the Mineral Processing and Foundries industry sectors.

**ORE/RED**

- Enforcement Strategies: A guidance document will be developed to assist the regions in focusing inspection resources on the compliance issues of highest concern or risk which caused the area to be a priority.

**Petroleum Refineries**

**OC/METD**

- OC/METD will continue to provide support for the implementation of the petroleum refinery sector strategy which includes ongoing efforts such as coordination of conference calls between work groups.

**OC/METD/ETB**

- OC/METD will provide a petroleum refinery inspection course.

**ORE/RED**

- Enforcement Strategies: A guidance document will be developed to assist the regions in focusing inspection resources on the compliance issues of highest concern or risk which caused the area to be a priority.

**Metal Services (Electroplating and Coating)**

**OC/METD**

- The following tools currently are available to support the regions in implementing this sector priority:
  - Sector Notebook
  - CD-rom titles, "Self Audit and Inspection Guide for Facilities Conducting Cleaning, Preparation, and Organic Coating of Metal Parts"

- Several inspection and compliance assistance tools including inspection check lists and plain language guides for the Chromium Electroplating NESHAP

- Through the ETV Program, third party verifications of various technologies is available; thereby, enabling sources to reduce or eliminate multimedia emissions from operations used in metal finishing.
- OC/METD will continue to provide support for the National Metal Finishing Resource Center and the Paint and Coatings Center which contain valuable information and tools pertinent to this sector.
- OC/METD, in conjunction with ORE, the regions, and the Office of Policy, will develop a sector strategy for this sector.

#### ORE/RED

- Enforcement Strategies: A guidance document will be developed to assist the regions in focusing inspection resources on the compliance issues of highest concern or risk which caused the area to be a priority.

### Core Program

#### **Media: General Support**

#### OC

Compliance Inspection Services- At this time, OC is offering two different compliance inspection services to the regions (as resources permit):

1) OC inspectors can perform lead compliance inspections (with some limitations) in the following statutes: FIFRA, CWA, TSCA, RCRA, and CAA.

2) OC inspectors can assist in conducting regional inspections as team members on single-media or multi-media inspections. Some examples where OC can assist regional inspections are:

- Serve as media lead inspectors on multi-media inspections.
- Document violations: take and maintain photo log, record notes and statements, and making copies of records.
- Review on-site facility records.
- Prepare facility inspection reports.

#### OC/EPTDD

- GEMS System Development and PCS Modernization: EPTDD is moving ahead with GEMS, (General Enforcement Management System) a system re-engineering initiative designed to produce a consolidated enforcement and compliance data management system that will support the core information needs of EPA's National Enforcement and Compliance Assurance program. This system will include basic components such as tracking of facility inspections, violations and enforcement actions, and addresses more complex needs for compliance assistance tracking, multi-media planning, targeting and evaluation. GEMS will provide a consistent framework, process and structure for collecting and tracking compliance and enforcement information. This year we will conduct a series of 5-day "General Design Workshops" in three major OECA Program Business areas: a) Enforcement; b) Compliance Monitoring/Assistance; and c) Program Management/ Evaluation.
- Quality Management Plans: EPTDD is working with the regions to develop system-specific quality management plans for our compliance monitoring and enforcement data systems (PCS, RCRIS, DOCKET, AFS, FTTS/NCDB). This effort includes development of baseline data quality assessments for the compliance data in each system as well as development of specific data quality objectives, opportunities for elimination of unneeded data, quality assurance plans and standard operating procedures for assuring quality data.
- Data Quality Strategy to Improve Key Programs: EPTDD is drafting a strategy which identifies key enforcement and compliance data which must be reliable for credible accountability and planning (targeting) efforts. The project will focus on how data systems can supply such data and will promote correction of erroneous and missing data and disinvestment in little used data. In addition, EPTDD expects to reach agreement with the Department of Justice to endorse truly electronic data interchange while preserving our ability to bring enforcement actions.
- Facility ID Phase III---Creation of Facility Registry System: EPTDD is assisting in a review of the Interim Facility Data Standard. The purpose of the review is to issue a revised set of core data elements. The Facility Registry System will be the authoritative source of information within EPA for these core data elements for facilities that EPA is most interested in and will streamline the collection and management of core facility data across multiple systems by converting existing forms (such as TRI Form R) to a standard reporting form.
- IDEA Enhancements: EPTDD plans to add new standard reports and revise existing reports for easier use of IDEA. We are working to make BRS and SDWIS available through IDEA, and to link ERNS, to provide spill data. In addition, standardized management-level reports on media and sector compliance will be generated on a routine basis for use by Headquarters and the regions.
- Strategic Planning: EPTDD is working with the Office of the Chief Financial Officer, the national media programs, and the regions to revise the Agency's Strategic Plan. EPTDD will also develop the outline and reporting infrastructure for OECA's portion of the FY 2000

Annual Plan Report (APR), which will provide an assessment of EPA's progress in meeting FY 2000 annual performance goals and measures and progress towards the longer term Strategic Plan Goals. This should assist regions in their efforts to establish priorities.

**FFEO**

- FFEO is available to provide assistance in targeting Federal facilities within geographical areas designated as priority by the regions/states (including enhanced use of FFTS/IdeaWin) and is also available for other related issues (technical assistance, environmental justice, SEPs, pollution prevention, etc.).

**Sector Support****OC/METD**

- In FY 2000, a final Consolidated Inspection Checklist and Guide will be provided for the following sectors: trucking and terminals, airports and maintenance facilities, railroads and rail yards, and automotive service and repair.
- OC/METD will provide inspector web site and an inspector's directory to facilitate communications (pending completion of a FY 1999 pilot).
- OC/METD will investigate the types of guidance and training appropriate for encouraging the use of new inspection technology.
- An airport compliance strategy (FY 2001) will be provided to the regions.
- OC/METD will continue to support and expand as appropriate the Sector Facility Indexing Project.
- OC/METD will continue to manage the National Metal Finishing Resource Center, the Paint and Coatings Resource Center, and Printed Wiring Board Resource Center.
- OC/METD will distribute the final report on the root cause analysis study for non-ferrous metals.
- OC/METD will continue to provide support for the Iron and Steel and Non-ferrous Metals Strategies.
- OC/METD will complete the update of E.O. 3500.1 started in FY 1999.

OC/CCSMD will provide the following support for the Chemical Sector strategy:

- General: OC/CCSMD will provide contractor support to gather and track results of the chemical sector projects including facility verification, response to compliance assistance mailings, and enforcement action.
- EPCRA 312 Project: OC/CCSMD will provide contractor support to gather information on facilities' compliance status with the EPCRA 312 reporting requirement.
- EPCRA 312 Project: OC/CCSMD and OC/TPED will develop ICR, F.R., and letters to states to gather information on facilities on compliance status with the EPCRA 312 reporting requirement.
- Compliance Assistance Tool: OC/CCSMD will complete the remaining nine media specific audit protocols for regulatory agencies and the regulated community.

**FFEO**

- FFEO is available to provide assistance in targeting Federal facilities within sectors designated as priority by the regions/states, especially as they relate to multi-media inspections, pollution prevention, or enforcement. Potential sectors include mining, auto service/repair shops, and printers (military bases, federal printing sectors, etc.).

**Media Support  
Clean Water Act Program****ORE/WED**

- Provided funding is available, Headquarters will continue to provide contractor assistance for enforcement investigation (e.g. field work, sampling and analysis) and for experts needed to support judicial enforcement actions.
- ORE/WED and OC/CCSMD will work with OC and the regions to develop guidance on implementation of the compliance and enforcement commitments in the "Clean Water Action Plan."

**OC/METD/ETB**

- OC/METD will provide an off shore oil platform inspection video.
- OC/METD will assist with NPDES inspector training.

**OC/EPTDD**

- In FY 2000, EPTDD will be modernizing the PCS System (Permit Compliance System) in

concert with the GEMS project to provide a more user-friendly system for regions and states. The technology will enable EPA to gain access to data held in state offices without developing costly interfaces. The modernization also will address new NPDES initiatives, such as Water Loadings Analysis (assessing contaminant discharge levels) and Place-Based permitting. The primary emphasis in FY 99 will be on assessing the information needs of the PCS permitting program.

**FFEO**

- FFEO will issue guidance for compliance and enforcement activity at FOTW's pursuant to the FFCA.

**Safe Drinking Water Act Program****OC/CCSMD/ORE/WED**

- OC/CCSMD will ensure that the Local Government Environmental Assistance Network supports improvements in Safe Drinking Water Act Compliance by highlighting compliance information related to these regulations.
- OC/CCSMD will work with ORE/WED and the regions to develop a compliance and enforcement guidance for the new drinking water regulations.
- OC/CCSMD will provide support to the regions to develop and will issue the annual National PWS Compliance reports, particularly the tribal portion of this report.

**FFEO**

- FFEO will develop policies and issue guidance to support new SDWA enforcement penalty authorities as related to Federal facilities.

**FIFRA, TSCA, and EPCRA Programs****OC/AgED**

- OC/AgED will provide training support including Pesticide Inspector Residential Training (PIRT) for regional, state, and tribal inspectors; and including product enforcement, use enforcement, and worker protection standards (WPS) enforcement. Training is given twice yearly in a central location with transportation/lodging for state lead agency participants covered by Pesticide Enforcement Cooperative Agreement funds. Regions must fund their own travel costs.
- Headquarters is soliciting state labs for Pesticide Enforcement Cooperative Agreement Funds for the Antimicrobial Testing Program. Once the labs are selected, EPA will offer a

comprehensive training session at the new Environmental Science center in Maryland.

**ORE/TPED**

- ORE/TPED will provide the Enforcement Case Development Training Course to the regions.
- ORE/TPED will provide support on specific FIFRA, TSCA and EPCRA regional enforcement cases, as resources allow, dependent on specific requests to ORE-TPED from the regions.
- A Headquarters/regional workgroup will be chaired by ORE/TPED to amend the Lead Enforcement Response Policy.
- ORE/TPED will provide National Enforcement and Compliance Tracking and Reporting system (NECTAR) database training.
- ORE/TPED will jointly develop with OC and the regions, and with program office and Customs input, a TSCA and FIFRA import enforcement strategy.

**FFEO**

- FFEO will provide implementation/new guidance for collection and analysis of EPCRA reporting requirements at Federal facilities under E.O. 12856 and complete substitute analysis for priority TRI chemicals.
- FFEO will issue guidance on a process for resolving EPCRA E.O. 12856 compliance problems at Federal facilities, and provide support dollars to the existing EPCRA SEE inspector grant or other existing regional contract vehicle to conduct EPCRA inspections of Federal facilities in all 10 regions.

**Clean Air Act Program**

**OC/METD**

- OC/METD will continue to provide on-going support for the Clean Air Act Applicability Determination Index.
- OC/METD will continue to provide assistance to the regions in preparing applicability determinations, and responding to alternative monitoring requests under the NSPS and NESHAP programs.
- OC/METD will work with the regions to implement the revised Compliance Monitoring Strategy.
- OC/METD will continue to participate in the MACT regulatory workgroups for the industry

sectors covered by the Division to ensure that the standards have adequate monitoring, record-keeping and reporting provisions, and are enforceable.

- OC/METD will provide assistance to the regions in developing implementation materials for the MACT program as resources allow.

### **RCRA Hazardous Waste Program**

#### **ORE/RED**

- **Basic RCRA Inspector Training:** ORE/RED together with OC/CCSMD and NETI will provide a computer-based basic RCRA inspector training course for regional and state inspectors in FY 2000.
- **Advanced RCRA Inspector Seminar:** ORE/RED will conduct a seminar for experienced RCRA inspectors to provide a mechanism to network and exchange information.
- **RCRA Enforcement Practitioners Course:** A course for regional, state, tribal, legal and technical personnel will be provided in FY 2000.
- **Legal/Technical Assistance:** ORE/RED will provide case support from legal and technical perspective, especially for resource intensive investigations and self-disclosures from incentive projects. Also, assistance with EAB appeals will be provided.
- **Risk Targeting Tool:** ORE/RED will provide the RCRA Priority Enforcement System to assist in factoring risk in inspection targeting decisions.

#### **FFEO**

- FFEO will negotiate cost reimbursement IAGs with Federal agencies and provide guidance and support to regions and states seeking reimbursement for RCRA inspections at Federal TSD facilities.

### **Federal Facilities Program**

#### **FFEO**

- FFEO will provide guidance, training, and contractor support for regions to conduct pilot Environmental Management Reviews (EMRs) at Federal facilities.
- FFEO will develop an implementation guide for E.O. 12856 Code of Environmental Management Principles for Federal agencies and guidelines for developing management systems at Federal facilities.

**Multimedia Program**

## ORE/MED

- National Enforcement Screening Strategy (NESS): ORE/MED will lead the case screening and selection exercise and co-lead or assist regional leads in the development of selected cases. MED will also provide, subject to budget constraints, contractor and travel funds for NESS case development.
- Case Support: ORE/MED will provide legal and technical assistance for the development of multimedia civil judicial referrals. Contractor and travel funds will similarly be provided, subject to budget constraints and resources necessary for the development of national cases under the NESS program.
- Financial Analysis Case Support: ORE/MED will provide legal counsel as needed on economic benefit, ability to pay, and general penalty issues. Also, funds will be provided for expert witnesses in a limited number of administrative cases.
- Financial Analysis Training: ORE/MED will provide training to regional and state enforcement personnel on the five computer models that support determinations of the economic benefit of noncompliance and ability to pay.
- Supplemental Environmental Project (SEP) Policy Support: ORE/MED will provide legal counsel on SEP issues and maintain the SEP database.
- Multimedia Inspector Training: ORE/MED will work with NETI on revising and providing the multimedia inspector's course.

**Environmental Justice Program**

## OEJ

- OEJ will develop a National Environmental Justice Guidance to address state and regional requests for Agency-wide consistency (e.g. identifying what is an Environmental Justice Community).
- OEJ will collect data from multimedia FY 98 inspections to establish an Environmental Justice baseline for inspections in 2000/2001.
- OEJ will provide Environmental Justice training.

**Tribal Program**

## OC/CCSMD:

- OC will continue to provide both multi-media and Subtitle D grant money to the regions for their use in ensuring compliance with EPA's regulations on tribal lands.
- Pending approval of funds, OC, together with NETI, will develop a tribal module for use in the Basic Inspector Training CD-ROM course.

**Criminal Enforcement, Forensics, and Training Program**

OCEFT

- OCEFT will provide support for investigations through NEIC assistance to the regions; training support for EPA, other federal agencies, states, localities, and tribes through NETI; and will accept investigative leads through the Criminal Investigation Division. This is provided across all sectors and all media, as appropriate.

**International Program**

OFA/IECD:

- C OFA/IECD will support Regions 6 and 9 in their implementation of the U.S.-Mexico workplans concerning compliance and enforcement for the Border region.
- C OFA/IECD will represent the enforcement and compliance interests of all Regions in the North American Commission for Environmental Cooperation and in all international fora as needed.

### **Proposed FY 2000 NETI Training Plan**

Each fiscal year, the National Enforcement Training Institute (NETI) publishes the OECA Course Plan. This plan lists courses that OECA offices plan to develop or deliver during the fiscal year. NETI invites the Regions to review the list and provide the following comments.

- S how effective is this plan in meeting regional training needs?
- S how effective is this plan in meeting state, local, and tribal training needs?
- S what additional training courses are needed?

Additional information about these courses, such as course descriptions or an updated schedule, is available at NETI's website (<http://www.epa.gov/oeca/neti>) or by calling 1-800-EPA-NETI. Questions can be addressed to Zena Aldridge at 202-564-6022.

#### COURSE PLAN SUBJECTS

##### **Air Training**

- Field Citations
- Accident Release Prevention Training
- CAA Introduction to Compliance and Enforcement
- Optical Remote Sensing (UVDOAS)
- AIRS Input and Reporting Training
- SOCMI Wastewater Training
- Air Practitioners Enforcement Workshop for U.S. EPA Regions
- AIRS Facility Subsystem (AFS) Retrievals Using IDEA Win
- ACTS/NARS Training
- Air Case Worker Training Series
- Air Inspector Training Series

##### **Superfund CERCLA Training**

- CERCLA Education Center-Fundamentals of Superfund
- CERCLA Education Center-The Enforcement Process
- New Attorney Orientation Training - Superfund
- Facilitating Internal Policy Meetings
- Superfund PRP Billing and Collection Training
- Orphan Share Training
- What Every Superfund Attorney Should Know About Bankruptcy
- Introduction to Superfund Enforcement - CBT Format
- Ability to Pay Computer-Based Training

**Criminal Investigation Training**

- Environmental Investigations - Basic
- Environmental Crimes Instructor Training Program
- Special Agent In-Service Training
- Advanced Environmental Crimes Training Program
- Advanced Environmental Investigative Operations Training Program
- Technical Personnel Training Program
- Tribal Environmental Investigations Training Program

**Compliance Assistance Training**

- Enviro-Surfing: Compliance Assistance via Electronic Resources
- Pollution Prevention for Enforcement and Compliance Officers

**Criminal Enforcement Training**

- Environmental Crimes Awareness
- International Association of Chiefs of Police Environmental Crimes Training Conference
- Basic Criminal Environmental Investigations (MEEA)
- Basic Environmental Enforcement Training (NEEP)
- Basic Environmental Investigations Training (WSP)
- CID/SAC Conference
- Criminal Enforcement Counsel Training Conference
- Basic Environmental Investigations Training (SEEN)
- Environmental Crimes Awareness for Local Law Enforcement (MEEA)
- Introduction to Clandestine Drug Laboratory Enforcement MEEA)
- Prosecuting Environmental Crimes (SEEN)
- Environmental Crimes Prosecution Orientation (WSP)
- Environmental Enforcement Training (WSP)
- EnviroCrimes: A Clear and Present Hazard (CBT)

**Case Support Training**

- ABEL 98 (Windows Version) Training
- BEN (Windows Version) Training
- Animal Feedlot Inspector Training
- Training for Regional Hearing Clerks
- Environmental Enforcement Training Seminar (NAAG)
- Basic Inspector Course
- Putting It All Together - The Case Development Process
- Interviewing Techniques for Regulators (MEEA)
- Negotiations Skills Training (NEEP)
- Negotiations Skills Training (SEEN)

- Financial Analysis, Financial Information and Ability-to-Pay: An Overview
- Basic Training in Court Room Procedures
- Intermediate Ability to Pay Course (Beyond ABEL)
- Alternate Dispute Resolution Skills Training - Advanced
- Financial Analysts' Workshop
- Negotiation Skills Training - Advanced
- PROJECT (SEP) Training (Windows Version)
- Administrative Hearings and Trials Training
- Prosecuting Environmental Crime (MEEA)
- Advanced Administrative Practice Institute
- Pleading and Litigating Civil Penalties
- INDIPAY
- SEP Policy Training -Video Format
- Environmental Enforcement Negotiations Skills - The Basics (Video)
- Basic Inspector Course: CBT
- Putting It All Together: The Case Development Process - CBT

**Water Training**

- Permit Compliance Data System (PCS) Basic Training
- Clean Water Act (CWA) Penalty Policy
- EDI DMR Implementation for Trading Partners
- NPDES Minimum Program Specific Inspector Training
- Sanitary Survey Training for Inspectors of PWS
- UIC (Underground Injection Control) Inspector Training
- EDI DMR Implementation for EDI Coordinators
- Permit Compliance System (PCS) Advanced Generalized Retrieval
- Permit Compliance System (PCS) QNCR Training
- UIC Class 5 Inspector Course - CBT

**Federal Agency/Facility Training**

- Implementing Pollution Prevention at Federal Facilities

**FIFRA Training**

- PREP: Compliance Management Part I
- FIFRA/TSCA Tracking System (FTTS) Training
- FIFRA Antimicrobial Case Development Training
- Case Development Training for FIFRA/TSCA/EPCRA
- Section Seven Tracking System Training
- FIFRA Inspector Training for Regions
- PREP: Comprehensive Pesticide Education
- PREP: Senior Comprehensive Course

- Pesticide Product Enforcement Course
- Use Enforcement Course (Worker Protection Standards)
- Strategies for Managing Pesticides
- PREP: Pesticides and Water
- PREP: Senior Comprehensive Course (Refresher)
- PREP: Laboratory Issues

**Information Management Training**

- EDI DMR Implementation for States
- IDEA Basic Training
- IDEA Advanced Training
- IDEA Win Advanced Features and Techniques

**Multi Statute Training**

- EPA Block-Indian Police Academy Basic Training
- Multimedia Inspections Training
- Multimedia Training for Regulators (MEEA)
- Introduction to Petroleum Refining Processes
- Advanced Multimedia Course for Regulators (NEEP)
- Environmental Statutes Review Courses - CBT

**Environmental Justice Training**

- EJ Seminar Series II - Community Outreach Public Participation Model
- EJ Seminar Series III - Science and Environmental Justice
- EJ Seminar IV - Focusing on Environmental Justice Solutions
- Environmental Justice Principles and Case Analyses
- National Environmental Justice Advisory Council New Member Orientation

**Other Training**

- Community Partnering for Environmental Results

**RCRA Training**

- RCRA Inspector Institute - Basic
- RCRA Subpart S Training
- RCRA Inspector Institute - Advanced
- RCRA Enforcement Practitioners Workshop
- Comprehensive Ground-water Monitoring Evaluation (CME) CBT Format
- RCRA Inspector Institute - Basic CBT



### **NEIC Support Requests**

NEIC will continue to direct its new activities toward national and regional initiatives and priorities as described in the OECA MOA guidance and the regional MOAs. NEIC project selection will also be guided by the Administrator's themes, the Agency Strategic Plan, GPRA, and the national goals effort. NEIC activities will be focused on an enforcement/compliance end point. Furthermore, NEIC will be examining requests for assistance based upon the potential for producing measurable environmental results and the degree to which activities provide opportunity to use or enhance unique capabilities (e.g., multi-disciplined teams, in-depth process evaluations, complex analytical procedures, etc.). As in the past, NEIC will continue to support ongoing projects to the extent commitments were made in FY 1999 or previous years, including case preparation and enforcement support.

To initiate discussions necessary to plan and schedule appropriate enforcement support for FY 2000, NEIC would like to receive requests from the regions by **June 18, 1999**. It is important that NEIC receive all regional submissions by June 18<sup>th</sup> to allow for an examination of all projects in line with resources. These requests should be as specific as possible, and include information to help NEIC determine whether they can provide the requested support. As completely as possible, this information should include:

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

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

If you have any questions regarding this process please contact either Gene Lubieniecki, (303) 236-6112, or Jack Neylan (202) 564-5033. Please send NEIC support requests to both Gene and Jack.

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