

FY 05-07 National Program Guidance

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE (OECA)

SECTION I. INTRODUCTION AND CONTEXT

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

The national program is organized into two major components: a limited number of national program priorities that focus on significant environmental risks and noncompliance patterns; and core program activities conducted to implement required elements of environmental laws and to maintain a credible presence to deter noncompliance. This guidance is organized around these two components: Section II focuses on national priorities and Section III focuses on core program activities.

The size and complexity of the national program presents many challenges for strategic planning, resource deployment, and program implementation. OECA has altered significantly its strategic and annual planning processes to meet these challenges.

Improvements in Strategic and Annual Planning

The changes OECA has implemented for the FY 2005-2007 planning cycle reflect Agency initiatives to move towards a more collaborative work planning process that relies on performance information as the basis for management decision making. In FY 2001, at the direction of the Deputy Administrator, a steering group of Agency senior managers was convened to assess, and make recommendations for improving Agency management practices with the goal of focusing the Agency on achieving measurable results. The recommendations of the Steering Group were contained in the report *Managing for Improved Results*¹, which was released in November 2002. Some of the recommendations contained in the report are:

- Development of a new strategic architecture that better reflects the results that the Agency is trying to achieve.

¹ The complete MIR report is available on Agency intranet at the following address:
<http://intranet.epa.gov/ocfo/perform/results/steeringgroupreport-final.pdf>

- Adoption of a “mutual accountability” approach that increases regional, state, and tribal collaboration in development of goals, measures, and priorities; and emphasizes the use of performance information to evaluate the effectiveness of all parties.
- Development of Regional Plans that more clearly tie regional activities to the Agency’s strategic architecture, and describe regional priorities.
- Reform of the Memorandum of Agreement (MOA) process for establishing performance agreements between regions and headquarters (in particular, streamlining the process and better aligning it with Agency, regional, and state planning processes).

In September 2002, the Office of Enforcement and Compliance Assurance (OECA) established its own team of headquarters and regional senior managers (i.e., the Planning Review Team) to assess and make recommendations for improving OECA’s planning, priority setting, and performance measurement practices. The team focused on the following areas: problem identification; better integration of OECA, media program, regional, state, and tribal priorities; strategy development and implementation; increasing efficiency and flexibility of the MOA process; and impact on OECA of the recommendations in the *Managing for Improved Results* report. The recommendations in the final Planning and Review Team report have resulted in the following changes to the OECA planning and priority setting processes:

- OECA established a Planning Council comprised of headquarters and regional senior managers to serve as an advisor to OECA’s Assistant Administrator on all matters relating to program planning (e.g., recommending national priorities, setting annual performance goals and measures).
- OECA’s priority setting and strategic planning processes have been synchronized with the Agency’s three-year strategic planning cycle.
- OECA revised its strategic objectives in the new Agency Strategic Plan so they more clearly link program activities to desired results, and include performance baselines and goals².
- OECA has expanded outreach to Agency media programs, regions, states, tribes, and other stakeholders in the identification and selection of national priorities.
- Beginning with FY 2005 OECA will replace the MOA with a more streamlined and flexible process for establishing performance agreements.

In the past OECA used the MOA to record regional commitments to Core Program activities and national priorities over a two-year period. Beginning with FY 2005 OECA’s work planning will be done on a three-year cycle to coincide with the Agency strategic planning cycle, and the MOA will be replaced with the following components:

- **Core Program Guidance** - describes the basic requirements and components of a

²For more detailed information on the Agency’s Strategic Plan and Goal 5 please refer to: <http://www.epa.gov/compliance/planning/direction/longterm.html>

credible assistance, monitoring and enforcement program. The core program guidance is organized around OECA's media programs, and identifies specific commitments that the regions are asked to make in support of the Core Program.

- **Regional Plans**³ - identify activities the regions will undertake to help achieve the national enforcement and compliance goals outlined in the sub-objectives of Goal 5 in the Agency's new strategic plan. The Regional Plans also identify regional priorities so they can be considered when headquarters and regions are determining appropriate regional activity levels in support of the core program and national priorities.
- **National Priority Performance-Based Strategies** - in order to ensure that we are achieving desired results, and to better manage our efforts, we will develop a performance-based strategy for each of the selected national priorities will have a performance-based strategy developed. The strategies will contain performance goals and measures, as well as communication and exit strategies.
- **Online Commitment System** - allows regions to record commitments to specific activities and requires narrative explanation only when there is an exception to performance expectations set forth in this guidance. This system, combined with the components above; will replace the paper-based MOAs.

EPA's Strategic Plan: The Compliance Objective and Sub-objectives

Within EPA's Strategic Plan, the national enforcement and compliance assurance program is included within Goal 5, which states that EPA will "improve environmental performance through compliance with environmental requirements, preventing pollution and promoting environmental stewardship." OECA's programs are included under objective 5.1 on improving compliance. Because of the large number (28) of program elements in the national program, the sub-objectives serving objective 5.1 are instead organized around achieving intermediate and end outcomes through the use of four tools – compliance assistance (sub-objective 5.1.1), compliance incentives (sub-objective 5.1.2), and compliance monitoring and enforcement (sub-objective 5.1.3). This sub-objective structure is used to organize the discussion of individual programs throughout this guidance.

³For more specific information on the regional plans go to:
<http://www.epa.gov/ocfo/regionplans/regionplans2.html>

SECTION II.

NATIONAL PRIORITIES FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

The process used to select national priorities for FY 05-07 featured increased collaboration with EPA Regional Offices, EPA program offices, state and tribal partners, and the general public; and greater emphasis on factual and quantitative analysis of noncompliance issues and environmental problems.

OECA began the process of selecting the national priorities in August 2003 by requesting that the regions solicit their states and tribes for potential program priorities. Regions were asked to consider the following criteria when nominating national priorities:

- Significant Environmental Benefit: Can significant environmental benefits be gained, or risks to human health or the environment be reduced through focused EPA action?
- Pattern of Noncompliance: Are there identifiable and important patterns of noncompliance?
- Appropriate EPA Responsibility: Are the environmental and human health risks or the patterns of noncompliance sufficient in scope and scale such that EPA is best suited to take action, or pursue a collaborative approach in which EPA leverages other resources?

These criteria define the scope and nature of environmental problems that are most appropriately addressed at the federal level. To collect information about environmental risks and noncompliance patterns, a number of regions conducted internal discussions about existing and potential national program priorities; and engaged their state and tribal regulatory partners in discussions of existing and potential national program priorities.

In addition to the regions soliciting potential priorities from their states and tribes, Headquarters consulted with the EPA air, water, pesticide and solid waste national program managers. OECA gathered feedback from the program offices on progress made on the existing priorities, and explored with them any new program areas warranting a national enforcement and compliance assurance focus.

After receiving the priority nominations, the Planning Council completed a number of steps to finalize a list of potential priorities to present the Administrator for final approval. The Council relied on the following factors to develop a list of fifteen potential priorities: the criteria discussed above, the number of times a potential priority was put forward by a region or a state, the analysis and background information supporting a potential priority, and flexibility for regions and states in priority implementation. In order to solicit comments and ideas from external stakeholders and the public, the potential priorities list was published in the Federal Register (FR) on December 12, 2003. For more information on OECA's FR notice and the potential priorities go to: www.epa.gov/compliance/planning/direction/index.html

After reviewing feedback from the FR notice, the Planning Council sponsored a National

Priorities meeting in January 2004. At that meeting regions, states, tribes, and state associations had the opportunity to discuss the proposed priorities in greater depth, and select a subset for further consideration. Attendees at the National Priorities meeting voted on their top choices for national priorities for the FY 2005 - 2007 planning cycle. The Planning Council met to discuss the comments and feedback raised at the National Priorities Meeting, and finalized a list of six candidates for recommendation to Administrator Leavitt for his final approval.

The Administrator subsequently approved the following six areas as national priorities for the FY 2005-2007 planning cycle:

- Clean Water Act (CWA)/Wet Weather;
- Clean Air Act (CAA) Air Toxics;
- CAA New Source Review (NSR)/Prevention of Significant Deterioration (PSD);
- RCRA - Mineral Processing;
- Tribal;
- Financial Assurance.

Petroleum Refining, a current national program priority, will be evaluated at the end of FY 2005 for potential return to the Core Program.

Upon approval of the priorities, the Planning Council formed teams of headquarters and regional personnel, supplemented by state and tribal representatives, and started to develop performance-based strategies for each national priority. The strategy teams have completed a performance-based strategy goal for each national priority, which are included in the priority descriptions below. Final strategies are due on June 1, 2004 and will include the following: a detailed description of the problem and regulated population; performance baselines, goals, measures; a gap analysis to identify Agency skill or capacity shortfalls with respect to specific priority areas, a communication strategy to convey progress and results to the regulated community and the public; and an exit strategy to wrap-up work once priority goals are met. Performance-based strategies will also address environmental justice issues and federal facility issues, where appropriate. Below are descriptions of the FY 2005-2007 national priorities along with a performance-based goal. It should be noted that the goal statements are subject to revision by the strategy teams as necessitated by changing circumstances, new information, or resource shifts.

Wet Weather

Selection Rationale - Discharges from wet weather events are the leading causes of water quality impairment as documented in Clean Water Act (CWA) Section 305(b) reports and represent significant threats to public health and the environment. The discharges come from overflows from combined sewers or sanitary sewers, concentrated animal feeding operations (CAFO) discharges and run-off, and storm water run-off. The main pollutants in sewer overflows are fecal coliform (raw sewage), bacteria, pathogens, nutrients, untreated industrial

wastes, toxic pollutants such as oil and pesticides, and debris washed into the sewer system. Discharges of nitrogen, phosphorous and fecal coliform from CAFOs to water bodies can occur through poor maintenance of waste lagoons, improper storage of animal waste, excessive and improper application of manure to crops, and excessive rainfall resulting in spills and leaks of manure management areas. Storm water runoff can carry high levels of pollutants such as sediment, oil and grease, suspended solids, nutrients, heavy metals, pathogens, toxins, and trash into sewer systems and ultimately into our streams, rivers, lakes, estuaries, wetlands, and oceans. Pollutants in sewer overflows, storm water discharges and CAFO's can cause a variety of diseases in humans, ranging from dysentery to hepatitis. Wet weather compliance problems have been prioritized by looking at regulated facilities contributing to the impairment of watersheds, beaches and other recreational areas, shellfish beds, source water protection areas, environmental justice areas, and other sensitive areas.

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

Combined Sewer Overflows (CSO) Goals

- By the end of FY 2007, 75% of all CSO communities have an approved LTCP with an enforceable schedule to meet water quality-based emission limits (WQBELs) or a formal enforcement action has been initiated to achieve that result.
- Between FY 2005 and the end of FY 2007, EPA will target at least 90% of CSO enforcement actions in high priority CSO communities. (High priority CSO communities are those communities with discharges that impact sensitive areas, are located in EJ areas, or have a significant environmental or human health impact.)
- By the end of FY 2007, eliminate discharges at 100% of CSO community outfalls that are located within one mile upstream of a drinking water intake from a surface water source, through initiated or concluded enforcement actions.
- Between FY 2005 and the end of FY 2007, concluded EPA CSO enforcement actions addressing LTCP development will achieve, when fully implemented, an average overflow volume reduction of at least 90%.
- By the end of FY 2007, provide compliance assistance to 100% of the CSO communities that will not have an approved LTCP with an enforceable schedule to meet WQBELs or where a formal enforcement action has not been planned or initiated to achieve that result.
- Between FY 2005 and the end of FY 2007, increase the understanding of environmental requirements, improve environmental management practices, and plan or achieve reduction, treatment, or elimination of pollution in CSO communities as a result of

receiving compliance assistance.

Sanitary Sewer Overflows (SSOs) Goal

1. Protect Public Health and Water Quality in lands and streams located in priority watersheds and/or communities where SSOs are currently impacting or have the potential to impact water quality and/or public health. Priority watersheds and communities are those that:
 - contain drinking water intakes or include waterbodies where SSOs have the potential to impact water quality and/or public health,
 - are in communities where SSOs may result in human exposure to raw sewage through basement backups or overland spills,
 - are in environmental justice areas,
 - have streams that are identified thru 303(d) and 305(b) lists as being impacted by SSOs or for pollution likely caused by SSOs, or
 - have shellfish harvest restrictions, beach advisories or fish kills as a result of SSOs or pollution likely caused by SSOs.

By April 1, 2005, EPA shall have completed an initial inventory of all municipal collection systems located in priority watersheds and/or communities. In addition, in the future within six months of the date of EPA approval of a state's 303(d) list, an update to the list shall be completed to ensure the list remains current. Between FY 2005 and the end of FY 2007, EPA will target at least 90% of SSO enforcement actions and compliance assistance and incentive activities towards municipal collection systems located in priority watersheds and communities.

2. Protect the public investment in water and sewer infrastructure by ensuring municipal collection systems have sufficient capacity and utilize proper asset management, operation, and maintenance principles. Ensure compliance with all relevant CWA requirements by providing compliance assistance and incentives, monitoring compliance and targeting enforcement actions, as appropriate. Ensure all entities in a priority watershed that contribute to SSOs bear their fair share of the cost to properly prevent SSOs and address those which do occur.

As an interim goal, by the end of FY 2007, EPA shall ensure that (1) 100% of the major municipal collection systems with an associated total treatment capacity of greater than 100 mgd and 30% of their associated satellite municipal collection systems and (2) 10% of the municipal collection systems with an associated total treatment capacity of greater than 10 mgd but less than 100 mgd and 30% of their associated satellite municipal collection systems have collection systems of adequate capacity with mechanisms to ensure that additional capacity is provided commensurate with increase in flows or are on an enforceable schedule to achieve the goal. In addition, other smaller municipal collection systems causing identifiable and significant public health and/or water quality impacts shall be similarly addressed.

CAFO Goal

A goal statement for CAFO's is currently being developed and will be available in the final wet weather performance-based strategy due for completion on June 1, 2004.

Stormwater Goal

A goal statement for stormwater is currently being developed and will be available in the final wet weather performance-based strategy due for completion on June 1, 2004.

Air Toxics - Maximum Achievable Control Technology (MACT)

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

The Air Toxics program first became an OECA priority in FY 2000. Since that time, the objective of the priority has been to distribute the substantial MACT implementation workload between headquarters and the regions through a regional Adopt-a-MACT program. Through the program, the regions adopted MACT standards for which they developed compliance monitoring and compliance assistance tools. This approach has resulted in the availability of a wide array of MACT implementation tools such as inspector check lists, applicability flowcharts and compliance timelines. Now that compliance dates are in place for more than 40 MACT standards, and implementation tools are available for the majority of these standards, the focus of the Air Toxics priority will shift from primarily a compliance assistance and tool development effort to compliance monitoring and enforcement beginning in FY 2005.

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

- identification and addressing of high risk pollutants of concern;
- focus on major Maximum Achievable Control Technology ("MACT") sources while maintaining regional flexibility to target all MACT source categories for investigation, including area sources;
- consideration of Environmental Justice (EJ) in targeting MACT source

- investigations;
- utilization and further development of targeting tools which identify and prioritize high risk sources of concern and substantive areas of noncompliance with MACT standards;
- identification of data gaps and ways to gather such data;
- coordination of enforcement efforts with states and tribes as appropriate.

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

Achieve an annual reduction of approximately 12,000 pounds of air emissions regulated by the MACT standards during the priority period through the investigation and enforcement of strategically chosen MACT standards. Such air emissions, which include known carcinogens, mutagens, teratogens, etc., are the most toxic air pollutants regulated under the Clean Air Act. Over the FY 2005-2007 period, approximately 36,000 pounds of air emissions regulated by the MACT standards will be reduced from these MACT sources. Sources identified as violating the emission requirements of applicable MACT standards will be placed on federally enforceable compliance schedules, or will have had appropriate enforcement action taken, to reduce their excess emissions to zero, in accordance with EPA's enforcement response policy.

To carry out the primary goal, the following sub-goals will need to be met:

1. By the end of the FY 2005-2007 period, each EPA Region will investigate at least three MACT source categories and in total, all Regions will investigate at least 20 different MACT source categories.
2. By the end of FY 2007, EPA Regions and OECA will undertake one National MACT investigation.

NSR/PSD

Selection Rationale - New Source Review (NSR) requirements in the CAA are intended to ensure that the construction of new sources or modification of existing sources does not jeopardize the attainment of National Ambient Air Quality Standards (NAAQS) in non-attainment areas. Prevention of Significant Deterioration (PSD) requirements ensure that areas with relatively clean air are not significantly degraded by the influx of new air pollution sources. The NSR and PSD programs directly control emissions of criteria air pollutants, and the PSD program requires sources to address a number of toxic air pollutants. Avoidance of the required review results in inadequate control of emissions, thereby contributing thousands of unaccounted tons of pollution each year, particularly of NO_x, VOC, SO₂ and PM₁₀. These emissions worsen problems in non-attainment areas and threaten to drive attainment areas into non-attainment. Investigations conducted by EPA at many coal-fired utility companies, refineries, and other industrial facilities reveal that many of them made modifications that were subject to NSR or PSD but failed to obtain the required permits or install necessary controls. Some sources may have unintentionally violated those requirements due to misunderstandings of the applicable law.

EPA has attempted through its Equipment Replacement Rule to reform NSR rules to provide greater clarity, but the D.C. Appellate Court has placed a stay on final implementation of the rule.

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

Performance-Based Strategy Goal:

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

Mineral Processing

Selection Rationale: The mishandling of mineral processing wastes has caused significant environmental damage and resulted in costly cleanups. These highly acidic wastes have caused fish kills and the arsenic and cadmium that these wastes often contain have been found in elevated levels in residential wells. Evidence gathered in recent inspections indicates that mineral processing facilities are failing to obtain the necessary permits and adequately manage their wastes.

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

Performance-Based Strategy Goal:

By FY 2007, reduce harm to human health and the environment by selecting a screening

model to assess human health exposure and environmental risks caused by wastes from mineral processing and mining⁴, so that high-risk facilities are identified and inspected on a priority basis. By FY 2007, ensure that all inspected facilities are in compliance or on a path to compliance and that X% of the remaining facilities are aware of the best management practices appropriate for the sector.

To carry out the above goal, the following sub-goals will need to be met:

- By the end of FY 2005, select a screening process that prioritizes mineral processing and mining facilities based on relative risk.
- By the end of FY 2007, ensure that 100% of facilities in the phosphoric acid sector are in compliance or are on a path to compliance through an enforceable mechanism, and/or are subject to an order addressing imminent and substantial endangerment.
- By the end of FY 2007, ensure that twenty-five of the mineral processing facilities (other than those in the phosphoric acid sector) identified as among those posing the most significant risk are in compliance, or are on a path to compliance, and/or subject to an order addressing imminent and substantial endangerment.
- By the end of FY 2007, assess compliance at five mining facilities identified as among those posing the most significant risk and evaluate these five facilities to determine whether an imminent and substantial endangerment exists.
- By the end of FY 2007 for X% of those mineral processing and mining facilities not addressed by goals 2 - 4 above, identify those waste management practices that cause health and environmental problems and, working closely with states and using federal and state authorities, effect changes in facility management practices to reduce the risk to human health and the environment.

Tribal

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

Performance-Based Strategy Goal: To improve protection of human health and the environment in Indian country, in consultation with tribes, by significantly improving

⁴ Mining is here defined as the extraction of mineral commodities excluding coal, sand, gravel, and aggregate.

compliance assistance, compliance monitoring and enforcement capacity. In addition, EPA will undertake targeted, direct compliance assurance and enforcement in Indian country to address tribal and non-tribal facilities posing significant threats to human health and the environment. At a minimum, EPA will ensure that national enforcement response policies for air, water, waste, toxics, and pesticides are met in Indian country. Furthermore, EPA will achieve environmental compliance at federal facilities in Indian country. EPA, after consultation with tribes, will develop specific outcome and output measures for the tribal priority. The measures will be available by June 1, 2004.

Petroleum Refineries

Petroleum Refining, a current national priority, will be evaluated at the end of FY 2005 for potential return to the Core Program.

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

Through this effort, EPA initiated scores of investigations at refineries and embarked on a series of multi-facility negotiations with major refining companies. At this time, global settlements have been reached with refiners representing approximately 40 percent of the domestic petroleum refining capacity. Subsequent to FY 2002, the emphasis in the petroleum refining strategy shifted to completing the investigation and settlement work that was in progress. Beyond concluding negotiations with those facilities we have already engaged, the regions will have a continuing resource commitment to implementing Federal consent decrees. Ultimately, EPA must assure that the states have sufficient capacity to both investigate and return to compliance, refiners that have not been the subject of Federal enforcement, and to secure the benefits of the Federal settlements through permitting, once the settlements have expired.

Performance-Based Strategy Goals:

Goal 1: 80% of the Domestic Refining Capacity Addressed Through Settlement, or by Filed Civil Action against Refiner or Referred to DOJ for filing.

Sub-Goal 1: 90% of the Domestic Refining Capacity in EJ Areas Addressed through Settlement, or by Filed Civil Action against Refiner or Referred to DOJ for Filing

Goal 2: 50% Improvement in Compliance

Goal 3: 20% Reduction in Emissions of SO₂ and NO_x

Goal 4: 100% of Consent Decree Deliverables Requiring a Response, Responded to, with 75% Responded to Within 90 Days.

Financial Responsibility

The Agency recommends this issue be evaluated during FY 2005 to determine whether it should be pursued as a priority beginning in FY 2006. During FY2005, OECA will explore options, approaches, and potential strategies to be developed.

Selection Rationale:

Financial assurance requirements under the environmental laws ensure that persons handling hazardous wastes, hazardous substances, toxic materials or pollutants have adequate funds to close facilities, clean up any releases of those materials, and, in some cases, compensate others that are harmed by the release of the materials. Inadequate adherence to financial assurance requirements may lead to releases that adversely affect human health and the environment, and the creation of Superfund sites. Pollutants that could result in contaminated groundwater, soils, and surface waters include: solvents, dioxins, oils, and heavy metals. Financial responsibility requirements exist in several different programs. For example, a hazardous waste facility in accordance with Resource Conservation and Recovery Act (RCRA) Subtitle C requirements, must address the cost of closing; the annual cost required for post-closure monitoring and maintenance; liability coverage for sudden and non-sudden accidental occurrences; and corrective action required at solid and hazardous waste management units. Financial assurance requirements under Subtitle C cover permitted and interim status facilities. Under the Underground Injection Control (UIC) program, financial assurance requirements ensures that Class I wells (hazardous waste) are properly closed so that there are no release to the environment. The Toxic Substances Control Act (TSCA) program financial assurance requirements ensure the proper closure and cleaning up of Polychlorinated Biphenyls (PCBs) at commercial storage facilities.

SECTION III. CORE PROGRAM ACTIVITIES

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

Performance expectations and regional responses are denoted within the core guidance in one of three forms: targets and commitments, guidance and projections, or performance benchmarks and exceptions. The first pair, target and commitment, is used when there is a quantitative target that the regions are being asked to commit to (e.g., conduct 10 inspections in a particular program area). The second, guidance and projection, is used when the regions are being asked to project the level of activity that will occur in a certain program area (e.g., guidance: regions should determine the number of inspections to conduct in a particular area to maintain a credible presence, projection: the number of inspections to be conducted by the region). The last pair, performance benchmark and exception, is used to explain a particular performance requirement when there is no associated target or projection. A response is required from the region if they will not be able to meet the benchmark. Whatever the form the performance expectation takes, they will be used to monitor and measure program performance.

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

1. GUIDANCE APPLIED TO ALL CORE PROGRAMS

Ensuring compliance involves the use of all available tools including compliance assistance, compliance incentives, compliance monitoring, and enforcement that are appropriate to

address specific environmental risks and noncompliance patterns. In using these tools in the national program there are certain fundamental activities and requirements that need to be carried out for all core program areas.

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

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

The Compliance Assistance Core Program in the Regions should include the following:

1. A strong Regional compliance assistance core program infrastructure:
 - A full-time Regional Compliance Assistance Coordinator to provide a focal point for planning and coordination of compliance assistance efforts;
 - Communication networks within the region, across regions, with headquarters, states, tribes, and external environmental assistance providers;
 - Mechanisms to coordinate and strategically build compliance assistance into national, regional and state planning processes.
2. Strategic planning for up front consideration and appropriate use of compliance assistance in addressing environmental problems:
 - Plan and coordinate compliance assistance across organizational and programmatic boundaries (e.g., media programs, enforcement, environmental justice, small business) and include states, tribes, and other stakeholders in this process;
 - Use integrated strategic approaches to target and address environmental problems, and consider all available tools, such as compliance assistance, compliance incentives (self-audits, opportunities for pollution prevention and Environmental Management Systems (EMS)), compliance monitoring, and enforcement (See November 27, 2002, Framework for a Problem-Based Approach to Integrated Strategies).
3. Tracking and measuring results of compliance assistance activities:
 - Report on planned and actual compliance assistance projects in the Integrated Compliance Information System (ICIS)
 - Report all compliance assistance project outputs, and for significant compliance assistance projects, also measure and report outcomes. Significant compliance assistance projects include activities that support the national OECA priorities or regional priorities.
 - Outcomes of federal compliance assistance on-site visits should be reported using

the available fields of the Compliance Assistance Conclusion Data Sheet in ICIS.

4. Providing compliance assistance targeted to appropriate problems, sectors, and geographic areas directly or through other providers (states, tribes, P2 providers, etc.)
 - Develop compliance assistance tools, conduct training, workshops, presentations, onsite visits and/or distribute outreach materials;
 - Share compliance assistance tools and opportunities within the regions and externally, e.g., with states, tribes, trade associations;
 - Serve as a wholesaler of compliance assistance to enable other providers to offer assistance, including, for example, providing training and tools to providers;
 - Place new tools on Compliance Assistance Clearinghouse as they are developed;
 - Market and wholesale compliance assistance opportunities and tools, and share success stories.

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

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

EPA promotes compliance through the use of incentive policies. These policies reduce or waive penalties under certain conditions for facilities which discover, promptly disclose, and correct environmental problems. EPA encourages the use of such policies, which include the Audit Policy, various market based incentives, compliance auditing protocols, and environmental management systems.

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

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

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

- consider and follow-up on, as appropriate, self-disclosures submitted under the OECA audit policy and small business policy.

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

Compliance Monitoring

All Regional programs should conduct appropriate compliance monitoring activities, which include conducting compliance inspections and investigations, record reviews, targeting, and responding to citizen complaints.

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

Examples of important compliance monitoring activities include:

- creating a viable field presence and deterrent by conducting compliance inspections, surveillance, and civil investigations in all the environmental media (air, water, waste, toxics, wetlands, etc.) in both delegated and non-delegated programs;
- performing compliance data collection, analysis, evaluation, and management;
- developing compliance monitoring strategies that include targeting and information gathering techniques;
- collecting and analyzing environmental samples at specific facilities, sites, and ambient locations;
- reviewing and evaluating self-reported data and records, environmental permits, and other technical information relating to compliance with environmental laws and regulations;
- maintaining compliance files and managing compliance records;
- responding to tips, complaints, and referrals from private citizens, other governmental entities, and non-governmental organizations;
- providing training to fulfill the requirements of EPA Order 3500.1, and other applicable Orders (1440.1, 1440.2, etc.);
- preparing reports and inputting compliance findings and inspection results into national databases;
- reporting manually, or into ICIS, the outcomes of inspections and evaluations using the Inspection Conclusion Data Sheet (ICDS) and analyzing and evaluating the outcomes of compliance monitoring activities;
- working with state, tribal, and local environmental regulatory agencies to monitor environmental compliance with environmental laws by private, state, federal, and tribal

- facilities;
- identifying, tracking, and coordinating with state, tribal, and local environmental agencies those violators that are, or should be designated as, Significant Noncompliers, High Priority Violators, or Watch List facilities;
- identifying potential environmental crimes through the civil compliance monitoring program, and referring and/or assisting in bringing environmental criminals to justice;
- developing compliance monitoring tools such as inspection guides, checklists, or manuals;
- promoting the recommendations detailed in the Office of Compliance (OC) guidance, *Final National Policy, Role of the Inspector in Providing Compliance Assistance During Inspections, June 25, 2003*.
- developing, negotiating, or overseeing state or tribal compliance and enforcement grants;
- providing training, assistance, support and oversight of state and tribal compliance inspectors;
- issuing and tracking federal credentials to state and tribal compliance inspectors;
- performing compliance screens for various Headquarters and/or state programs such as Performance Track.
- Conducting federal oversight inspections/evaluations to corroborate state or tribal inspection findings. Oversight inspections/evaluations are a principal means of evaluating both the quality of an inspection program and inspector training (Revised Policy Framework for State/EPA Enforcement Agreements, August 25, 1986).

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

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

Enforcement

EPA's national enforcement and compliance assurance program utilizes several types of enforcement actions to correct and deter noncompliance. Civil enforcement authorities include administrative and judicial actions. In situations where violations are knowingly and willfully committed, EPA uses criminal enforcement actions. In using its enforcement authorities EPA regions are responsible for:

- adhering to the applicable program enforcement response policies (ERPs), the timely and appropriate (T&A) guidances (where these exist), applicable penalty policies, the Supplemental Environmental Project Policy, and implementation of the Watch List project;
- adhering to OECA Nationally Significant Issues (NSI) and delegations guidance in all

- cases as applicable;
- tracking compliance with consent decrees and administrative orders, and taking all necessary actions to ensure continued compliance;
- inputting all required data into the national databases, where applicable, and completing and entering the case conclusion data sheets for all concluded actions, including those in the CERCLA program, into ICIS;
- continuing to resolve enforcement cases initiated prior to FY 2005 and ensure investigation and issuance of appropriate action for any open tips/complaints/referrals received by EPA;
- working with the Department of Justice and EPA Headquarters as appropriate to complete outstanding judicial and administrative actions; and
- continuing and completing appropriate case development activities including issuing information requests, conducting site visits, and developing appropriate remedies.

D. Data Quality and Reporting

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

Each OECA office and Region should have an approved Quality Management Plan establishing the offices' procedures for ensuring the sound collection and use of enforcement and environmental data. In addition, the Data Quality Strategy of March 25, 2002 outlines an approach to systematically identify and address problems with the enforcement and compliance data. Part of this Strategy is to conduct projects (e.g., the enforcement action audit) that will require Regional, state, and tribal involvement.

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

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

OECA will issue an annual Enforcement and Compliance Reporting Process memo by the end of the first quarter that will provide that year's reporting requirements, GPRA measures, schedules/deadlines, contacts, etc. This memo is a comprehensive guide to the annual enforcement and compliance reporting requirements covering the various enforcement and compliance program tools (e.g., compliance assistance, compliance monitoring, compliance incentives, enforcement) and all media program areas (e.g., CAA, CWA, FIFRA, TSCA, CERCLA). All reporting requirements for national priority areas and core program areas will be identified in this memo on

a fiscal year basis.

All federal enforcement cases must be entered into ICIS, the database of record, and also entered in the associated legacy system, if one exists. Applicable Case Conclusion Data Sheet information on all concluded actions must also be entered into ICIS and, beginning in FY 2005, applicable CACDS data should be entered into ICIS. The legacy systems (e.g., AFS, PCS, RCRAInfo) are the data base of record for inspections, violations, significant violators (SNCs)/high priority violators (HPVs); however many Regions are also entering their inspections into ICIS. A large percentage of federal inspections are reported manually because there is no corresponding program database. OECA is striving to have all of the manually reported federal inspections (e.g., UST, SPCC, wetlands), entered into ICIS during this planning cycle and will provide separate guidance on this through the annual Enforcement and Compliance Reporting Process memorandum.

E. EPA State Relations

Consistent with the process for developing National Program Guidance, Regional Plans and State performance agreements, it is critical to have effective ongoing consultation and communication between EPA and states. Regions and states should ensure that established processes and procedures for notification of inspections and enforcement actions in authorized and non-authorized programs, pursuant to the “no surprises” policy, are in place and may be included in work plans for Performance Partnership Agreements, Performance Partnership Grants or categorical grant agreements. The work plans may be tailored to specific state conditions and levels of performance. In negotiating grant work plans, regions and states should consult the National Program Guidance and follow EPA grant regulations, i.e., 40 CFR Parts 31 and 35. OECA guidance and policy, such as the 1986 “Revised Policy Framework for State/EPA Enforcement Agreements” and its subsequent addenda, should continue to guide Regional discussions with states.

State Review Framework

OECA is currently developing jointly with the ECOS Compliance Committee a State Review Framework for managing a consistent process for reviewing the performance of state compliance and enforcement programs. These reviews, which will first address the CAA - stationary sources, CWA - National Pollutant Discharge Elimination System (NPDES), and RCRA hazardous waste, will be in line with OECA’s current approach of using evaluations and data to guide and improve the compliance and enforcement program and focus resources in those areas that will yield the most positive environmental benefits. It is expected that an effective review process will be in place and that ten pilots, one state per Region, will be completed in 2004. After evaluation of the pilots, reviews of the remaining states and territories will be conducted by the end of calendar year 2007. While the protocols for these reviews are currently being developed, it is anticipated that they will become part of existing program review activities and will not constitute new reporting or additional reviews. It is envisioned that these state reviews should be incorporated into current program and grant review and evaluation processes. Regions should

begin to discuss the use of the Review Framework with their states during this current round of program and work plan negotiations. The ten pilots should, to the extent possible, be identified in new or current PPAs, PPGs and categorical grants work plans. Regions and states with multiple year PPAs and PPGs that are already in place should plan to include the State Review Framework process as part of program review activities in upcoming years. The criteria and protocols for these reviews will be consistent with the 1986 “Revised Policy Framework for State/EPA Enforcement Agreements” and the media-specific enforcement response policies.

Grants Management

OECA awards a number of assistance agreements to states, tribes, and non-profit organizations to conduct a variety of activities, particularly in the areas of data management and performance measurement, many of which are managed by the Regions. OECA wants to emphasize that effective grants management is a high priority for the Agency. The primary Agency guidance for managing assistance agreements is EPA Order 5700.6, which became effective January 8, 2003 and was recently revised. The Order streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and grant management. The order encompasses both the administrative and programmatic aspects of the Agency’s financial assistance programs. It requires that EPA develop and carry out a post-award monitoring plan, and conduct basic monitoring for every award. In January 2004, a new Grants Policy Issuance, GPI 04-02, Interim Policy on Environmental Results Under EPA Assistance Agreements, came out of the Office of Grants and Disbarment (OGD). This policy instructs EPA to describe the goal level link to the Agency’s Strategic Plan for each grant awarded after February 9, 2004. OGD is currently developing a new EPA Order that will require EPA and grant recipients to discuss the environmental results of grants in grant work plans. This Order is expected to be completed by mid-year 2004 and to become effective January 2005. Regional Offices will need to consider these new and upcoming policies when preparing assistance agreements with states.

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

Regions are reminded that Superfund enforcement and RCRA Corrective Action are covered under the new Strategic Plan's Goal 3. It is important to make sure that the Superfund and RCRA Corrective Action program commitments for Goal 3 are addressed. The commitments for Superfund are to maximize Potentially Responsible Party (PRP) participation at Superfund sites by leveraging PRP resources and recovering costs. The commitments for RCRA Corrective Action are to address the two RCRA environmental indicators (EIs), which measure human exposures under control and migration of contaminated groundwater under control. Regions are encouraged to use enforcement authorities and tools where appropriate to address EI's and final clean-up. National program direction for Superfund activities are developed and conveyed through the SCAP process. RCRA Corrective Action is addressed through the Mutual Performance Agreement (MPA) process.

NATIONAL PROGRAM CORE REQUIREMENTS

2. CLEAN WATER ACT (CWA) PROGRAMS

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

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

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

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

- Existing national compliance and enforcement policy and guidance, e.g., the 1989 *National Enforcement Management System (EMS)*;
- Consider all available data in implementing the compliance and enforcement activities described below;
- Maintain an effective inspection program in each of the water program areas;
- Evaluate all violations, especially those causing facilities to be on the Watch List, determine an appropriate response, per the EMS if applicable, and take that action. Focus actions in the priority areas listed in the work planning guidance while maintaining a presence in all water programs; and
- Take timely and appropriate actions against facilities in significant noncompliance (SNC). Any facility not addressed in a timely and appropriate manner is an exception and should be targeted for Federal enforcement.

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

Although there is no target for assistance activities, assistance is an appropriate tool, in particular, when there are new rules, sector specific compliance problems, and sectors with a preponderance of small business. Regions should refer to the Compliance Assistance activities description in Section III - Core Program Activities.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.3)

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

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Compliance Monitoring

NPDES Program

Performance Expectations

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

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

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

Since inspections at a major facility generally require more resources than an inspection at a minor facility, inspection tradeoffs - that is the number of minor facilities substituted for major facilities - should generally be at a 2:1 or greater ratio.⁵

- **Performance Benchmark:** Regions and states must inspect 100% of the CWA majors per year in each state or the equivalent coverage of a combination of major and minor priority minor facilities.
- **Exception:** Provide an explanation if the regions and states will not meet the 100% inspection coverage requirement.
- **Guidance:** The regions must provide NPDES inspection projections that includes state-by-state numbers and the number project to be conducted by the region.

⁵This ratio is based on previous work load models which averaged the amount of resources needed to conduct major and minor inspections. All minors inspections that are traded-off for majors MUST be put into PCS/ICIS in order for the Region/State to get “credit” for them.

- **Projection:** Provide the state-by-state inspection numbers and an explanation if the region and the states will not meet the 100 % benchmark for all majors.
- **Guidance:** Regions should conduct a sufficient number of oversight inspections to ensure the integrity of each state’s compliance monitoring program.
Projection: Number of oversight inspections to be conducted per state; provide a detailed explanation if no oversight inspections are projected in this area.
Regions should ensure that all on-site NPDES inspectors collect 100% of ICDS data. Regional inspectors can use a manual ICDS form to collect the data or keep the data in their notes for ICIS data entry. Reporting of the data is described under the Data Quality and Reporting section below.

Biosolids/Sludge

- **Guidance:** Although sludge (or biosolids) is **not** an area of national priority for OECA, some regions expend resources conducting biosolids/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 and they should report these inspections in PCS.
- **Projection:** Number of biosolids/sludge inspections to be conducted per state.

Regions should ensure that all on-site biosolids/sludge inspectors collect 100% of ICDS data. Reporting of the data is described under the Data Quality and Reporting section below.

Note: CAFO Activities

The CAFO (wet weather) program is an element of a national priority with activities and performance measures for the Federal compliance and enforcement program. In addition, core activities are necessary to implement the CAFO requirements under the National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, Final Rule, 68 Federal Register 7176, February 12, 2003. EPA has developed the CAFO Permitting and Compliance Strategy which outlines key steps, strategic considerations, and guidance on building a core CAFO program (e.g., state capacity for permitting and ensuring compliance). The Agriculture Assistance Center is source of information about CAFO’s for the Regions (www.epa.gov/agriculture).

Pretreatment Program

Performance Expectations

Where EPA is the control authority, regions should evaluate each Significant Industrial User (SIU) file (e.g., review the DMR and periodic compliance reports) and follow-up with field investigations at 100% of the SIUs that have violations identified in their periodic reports, or where the region believes that the SIU discharge may adversely impact POTW operation, effluent

quality, or receiving body water quality.

- **Performance Benchmark:** Regions and states should annually inspect 100% of the POTWs with approved pretreatment programs in both approved and unapproved states.
- **Exception:** Provide and explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Conduct field investigations at 100% of the SIUs with violations identified in their periodic reports
Exception: Provide an explanation if the region will not meet the benchmark.
- **Guidance:** Project the number of Federal (and state as appropriate) inspections in approved pretreatment programs.
Projection: Number of inspections (and percent of universe covered) reported by state; provide an explanation if no activity projected in this area.
- **Guidance:** Project the number of Federal (and state as appropriate) investigations in both approved and non-approved pretreatment programs.
Projection: Number of investigations (and percent of universe covered) reported by state; provide an explanation if no activity projected in this area.

Regions should ensure that inspectors collect 100% of all on-site pretreatment inspections ICDS data. Reporting of the data is described under the Data Quality and Reporting section below.

Section 404 (Wetlands)

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

Performance Expectations

- **Guidance:** Project the number of wetlands inspections to be conducted in each fiscal year.
Projection: Number of wetlands inspections; provide an explanation if no activity projected in this area.

Regions should ensure that 100% of all on-site wetlands inspectors collect ICDS data. Reporting of the data is described under the Data Quality and Reporting section below.

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

Section 311 is a Clean Water Act authority but responsibility for compliance monitoring, enforcement and implementation resides in a number of different Regional divisions with the following titles: Emergency and Remedial Response; Superfund; Hazardous Waste Cleanup; Environmental Cleanup; Ecosystems Protection and Remediation; Waste Management.

Past compliance and enforcement efforts in CWA 311 have focused on ensuring that regulated sources have maintained the required Spill Prevention Countermeasures and Control (SPCC) plans. Regions should check compliance monitoring at facilities subject to SPCC requirements to ensure that the plans are adequate and meet the regulatory requirements, particularly with regard to physical security requirements. In light of continuing concerns regarding chemical safety, Regions should also consider the following factors in focusing their targeting and inspections efforts:

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

Performance Expectations

- **Guidance:** Project the number of federal SPCC inspections at federal facilities, in Indian Country, and overall.
Projection: Number of federal SPCC inspections broken out by type (i.e., federal facilities, Indian Country, total); provide an explanation if no activity projected in this area.

Regions should ensure that all on-site SPCC inspectors collect 100% of ICDS data. Reporting of the data is described under the Data Quality and Reporting section below.

Enforcement

NPDES Program

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

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

Pretreatment

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

Section 404 (Wetlands)

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

CWA Section 311 (SPCC)

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

DATA QUALITY AND REPORTING

NPDES Program

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

- All CWA NPDES federal enforcement cases are required to be entered into both PCS and ICIS until PCS is modernized into ICIS. Annual reporting guidance will be provided in the Enforcement and Compliance Reporting Process memorandum. (Refer to Section III.D)
- Regions must report all ICDS data collected from on-site CWA inspections (NPDES, biosolids/sludge, pretreatment, wetlands and SPCC). Regions can either submit the one-page ICDS Reporting Form or enter the data into ICIS. If the manual reporting form is used, first-line supervisors or their designated alternate should review the ICDS data. If the regions enter the data into ICIS, the first-line supervisor or alternate should verify that the information is entered into ICIS as soon as possible after completion of the inspection.
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

Pretreatment:

- OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle and will provide separate guidance on wetland inspection reporting through the Enforcement and Compliance Reporting process. (Refer

to Section III.D)

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

Section 404 (e.g. Wetlands)

- OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle and will provide separate guidance on wetland inspection reporting through the Enforcement and Compliance Reporting process. (Refer to Section III.D)
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

CWA Section 311 (SPCC)

- OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle and will provide separate guidance on SPCC inspection reporting through the Enforcement and Compliance Reporting Process. (Refer to Section III.D).
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

PROGRAM OVERSIGHT

NPDES Program

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

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

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

- number of SNCs *identified* (and percent of universe);
- number (and percent) addressed in a timely and appropriate manner;

- number of Watchlist facilities per region.

Pretreatment Program

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

Wetlands

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

CWA Section 311 (SPCC)

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

3. SAFE DRINKING WATER ACT (SDWA) PROGRAM

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

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

Public Water System Supervision (PWSS) Program

Regions should target compliance assistance towards small drinking water systems (serving 3,300 or fewer users). Using the data contained in Safe Drinking Water Information System/Federal Version (SDWIS/FED) to identify patterns of non-compliance, Regions can both target the small systems most likely to benefit from compliance assistance and assemble compliance assistance materials suited to their particular needs. Regions should coordinate with the drinking water program office and work with the states and tribes to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems'

technical and financial capacity to perform required activities. Regions should focus compliance assistance resources on helping small systems and tribal systems comply with microbial rules, most particularly the Stage 1 Disinfectants and Disinfection Byproducts Rule and the Long Term 1 Enhanced SWTR, some provisions of which required small systems to take action starting in 2003 and 2004. Compliance assistance efforts will include outreach and education programs to ensure that sources understand both the requirements and the assistance available to help them comply.

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

Projections/Measures: Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in the Integrated Compliance Information System and report all on-site assistance visits and outcomes using the Compliance Assistance Conclusion Data Sheets. Please note that the core compliance assistance program sets out other general guidance and expectations the Regions should follow when providing compliance assistance to public water systems.

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

Regions should have **a goal of reporting 100% of the four specific compliance assistance performance measures identified in the Data Quality and Reporting section.**

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Monitoring

Public Water System Supervision (PWSS) Program

Performance Expectations for Sanitary Surveys

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

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

Exception: The Region is to provide an explanation in its annual workplan commitments if the Region/State(s) and tribes with primacy do not anticipate meeting the one third and one fifth targets in a fiscal year.

Performance Expectations for Actions Taken in Response to Lead Action Level Exceedances

Each quarter, in areas where EPA directly implements the lead and copper rule, Regions are to report the progress community water systems and non-transient non-community water systems have made toward reducing lead in drinking water that exceeds the action level for lead.

Projection: On a quarterly basis, Regions are to explain the status of lead response actions taken by 100% of the large and medium community and non-transient non-community water systems, and 85% of the small community and non-transient non-community water systems, whose 90th percentile tap samples have exceeded the lead action level for the past three consecutive monitoring periods. Regions should also work with States and tribes to ensure that PWSSs with elevated lead levels in primacy states and tribes are making progress toward reducing lead in drinking water.

Exception: The Region is to provide an explanation in its annual workplan commitments if it does not anticipate meeting these projections.

Underground Injection Control (UIC) Program

Regions should ensure an effective field presence through routine inspections of all classes

of wells. The actual number of inspections and the distribution by well class will depend on the Region and whether or not all or part of the program has been delegated to the States.

Enforcement

Public Water System Supervision (PWSS) Program

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

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

- **Performance Benchmark for Microbial SNCs:** Ensuring compliance with the microbial rules (SWTR, TCR, DBPR, IESWTR, FBR, LT1 and Stage 1 DBPR) is the first priority for Regions/states and tribes with primacy. Regions/states and tribes with primacy are to address 100% of microbial SNCs at large and medium public water systems (CWS, NTNCWS, and TCNCWS), and at least 90% of microbial SNCs at small (serving up to 3,300 users) public water systems, before they become exceptions.
- **Performance Benchmark for Nitrates SNCs:** Regions/states and tribes with primacy are to address 100% of nitrates SNCs at large and medium public water systems (CWS, NTNCWS, and TCNCWS), and at least 85% of nitrates SNCs at small public water systems, before they become exceptions.
- **Performance Benchmark for Lead SNCs:** Regions/states and tribes with primacy are to address 100% of lead SNCs (including, but not limited to, initial tap monitoring, optimization of corrosion control, and public education) at large and medium community and non-transient non-community water systems, and 85% of lead SNCs at small community and non-transient non-community water systems, before they become exceptions.
- **Performance Benchmark for Chronic Contaminant SNCs:** Regions/states and tribes with primacy are to address 100% of all other chronic contaminant SNCs at large and

medium community and non-transient non-community systems, and at least 85% of all other chronic contaminant SNCs at small community and non-transient non-community systems, before they become exceptions.

DATA QUALITY AND REPORTING

Efforts to assess the quality of the data in the Safe Drinking Water Information System/Federal System (SDWIS/FED) have shown that the data in the system are highly accurate, but many violations are not in the system. As a recent Inspector General Report⁶ notes, data verifications conducted on violations information for the period between 1999 and 2001 found that SDWIS/FED contained only 65% of all health-based violations and 22% of all monitoring and reporting violations that should have been reported. While the largest burden for improving the quality of data in SDWIS/FED falls on the States, it is important that EPA also do its best to ensure data are reported accurately and completely.

Compliance Assistance

The Regions should have a goal of reporting 100% of the following information into either SDWIS, the Integrated Compliance Information System or on a Compliance Assistance Conclusion Data Sheet. When OECA decides the appropriate reporting scheme, a separate memorandum will be issued.

- Number of public water system SNCs that returned to compliance as a result of an on-site compliance assistance visit and which were not the subject of a reported enforcement followup activity.
- Number of small and tribal public water systems in violation that received direct compliance assistance and which were not the subject of a reported enforcement followup activity.
- Number of public water systems that received compliance assistance related to either a microbial rule (TCR, SWTR, DBPR, IESWTR, FBWR, Stage 1 DBR or LT1) or the lead and copper rule.
- Number of public water systems that received compliance assistance during a sanitary survey.

Public Water System Supervision (PWSS) Program

Regions, states and tribes with primacy are expected to ensure that all required data is input

⁶ *EPA Claims to Meet Drinking Water Goals Despite Persistent Data Quality Shortcomings*; Report No. 2004-P-0008; March 5, 2004.

into SDWIS, including Federal facilities as applicable. Regions with direct implementation programs, including those with authority for implementing the drinking water program on tribal lands, are expected to input the data themselves. If Regions are directly implementing any of the new drinking water regulations, they must ensure that the required data is in SDWIS. Regions are expected to continue to support the legacy system SDWIS/FED. Regions should review reports as appropriate to ensure changes to data are successfully accepted in SDWIS/FED. All PWSS federal enforcement cases should be entered into both ICIS and SDWIS. OECA is striving to have all federal inspections that are currently reported manually (e.g., sanitary surveys), entered into ICIS during this planning cycle and will provide separate guidance on sanitary survey reporting through the Enforcement and Compliance Reporting Process (see Section III.D.).

- Beginning in FY 2006, all relevant ICDS information should be completed and reported for on-site PWSS inspections or evaluations and entered into ICIS. First-line supervisors or their designated alternate should review the ICDS forms prior to mid-year and end-of-year data entry into ICIS.
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

Underground Injection Control (UIC) Program

- OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle and will provide separate guidance on UIC inspection and evaluation reporting through the annual Enforcement and Compliance Reporting Process memorandum. (Refer to Section III.D).
- Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS.

PROGRAM OVERSIGHT

Public Water System Supervision (PWSS) Program

To ensure adequate program oversight, Regions should review data in the Safe Drinking Water Information System (SDWIS) and review other information on compliance available to the Region.

In evaluating Regional performance, OECA will look at:

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

- number (and percent) exceptions addressed; and number remaining.

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

Underground Injection Control (UIC) Program

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

4. FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT PROGRAM

EPA and states have complementary roles in pesticide enforcement. In general, EPA is responsible for pesticide products and states are responsible for pesticide use. EPA is responsible for investigating and enforcing pesticide registration and labeling, data quality requirements (FIFRA Good Laboratory Practice Standards), the effectiveness of hospital disinfectant products, pesticide producing establishment registrations and the annual submission of production data, import and export requirements, and Registrant's reporting of unreasonable adverse effects information. States conduct most field inspections, including product issues, and may take enforcement actions or in some cases, refer the case to EPA. The statute gives primary use enforcement responsibility to the states. However, regions are expected to follow up on all referrals received from headquarters and states.

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

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

FOR FY 2003 AND 2004, regions and headquarters agreed through a consensus process that the following five FIFRA program areas within the core should receive special focus: worker safety, e-commerce, antimicrobial testing, label enforceability, and unregistered sources and

product integrity. For each area, regions and headquarters jointly developed workplans of activities to be undertaken and expected outcomes. A similar consensus approach will be used to develop focus areas for FY 2005-2007.

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

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

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

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

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

Performance Expectations

- **Guidance:** Regions should determine the number of inspections to be conducted in each of the FIFRA core program areas
Projection: Number of federal and state inspections in each core area, broken out by state. Projections will be used by Regions as the basis for negotiations with each of their state enforcement grantees; provide an explanation if either no activity or a significant reduction of activity is projected in this area.

DATA QUALITY AND REPORTING

It is critical that the regions enter all Federal state, and tribal data into the FIFRA/TSCA Tracking System (FTTS), which is then merged into the National Compliance Data Base (NCDB).

All federal enforcement cases should be entered into both ICIS and FTTS. Annual reporting guidance will be provided in the Enforcement and Compliance Reporting Process memorandum. (Refer to Section III.D).

Beginning in FY 2005, all relevant ICDS information should be completed and reported for on-site FIFRA inspections or evaluations and entered into ICIS. First-line supervisors or their designated alternate should review the ICDS forms prior to mid-year and end-of-year data entry into ICIS or manual reporting to verify completeness and accuracy.

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

PROGRAM OVERSIGHT

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

5. EPCRA PROGRAMS

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

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

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

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Monitoring

EPCRA 313

Regions are encouraged to use screening and targeting tools to focus limited Federal resources on national and regional priority areas. A general area of emphasis is to target facilities that meet reporting criteria but have not reported.

Performance Expectations

- **Target:** In the EPCRA 313 program, regions are expected to conduct at least 4 on-site Data Quality inspections each fiscal year as part of their overall inspection commitment.
Projection Commitment: Number of data quality inspections; provide an explanation if below the target level.
- **Target:** In the EPCRA 313 program, regions are expected to conduct at least 20 inspections each fiscal year as part of their overall inspection commitment.
Projection Commitment: Number of inspections; provide an explanation if below the target level.

Regions should ensure that all on-site EPCRA 313 and non-313 inspectors collect 100% of ICDS data. Regional inspectors can use a manual ICDS form to collect the data or keep the data in their notes. Reporting of the data is described under the Data Quality and Reporting section below.

EPCRA 304/311/312 CERCLA 103

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

Enforcement

EPCRA 313; EPCRA 304/311/312 CERCLA 103

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

DATA QUALITY AND REPORTING

EPCRA 313; EPCRA 304/311/312 CERCLA 103

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

For FY 2005-2007, OECA is considering making ICIS the official database or record for the manually- reported EPCRA non-313 inspections/evaluations. If OECA decides this is an appropriate reporting scheme, a separate memo will be transmitted to the regions informing them to enter the EPCRA non-313 inspections/evaluations into ICIS.

For 2005-2007, all relevant ICDS information should be completed and reported for all EPCRA 313 and non-313 on-site inspections or evaluations and entered into ICIS. First-line supervisors or their designated alternate should review the ICDS forms prior to mid-year and end-of-year data entry into ICIS or manual reporting to verify completeness and accuracy.

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

6. TSCA

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

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

Compliance assistance will be the main focus of OECA activity for the TSCA AHERA program in FY 2005-2007. The EPA-supported Schools Compliance Assistance Center will be the primary vehicle for providing compliance assistance, with regions participating where resources permit. For lead-based paint, as part of the integrated strategy, efforts, Regions will continue to work with the regulated community to provide compliance assistance at appropriate opportunities such as home shows, meetings, and discussions with landlord associations. Inspectors will provide compliance assistance materials at inspections which will cover all aspects of the lead paint program.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

Lead-based Paint: As part of the integrated strategy, the lead paint program will continue to focus its work with the regulated community to look for ways to achieve a lead-safe

environment on a voluntary basis, as part of compliance assistance or as necessary and, where feasible, through negotiated settlements to enforcement actions.

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

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

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Core TSCA

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

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

Performance Expectations

- **Guidance:** Project the number of Core TSCA Inspections (sections 4, 5, 8, 12 and 13)
Projection: Number of federal inspections; provide an explanation if no activity projected in this area.
- **Performance Benchmark:** Follow-up, as appropriate, 100% of citizen complaints.
Exception: Provide and explanation if the region will not meet the benchmark.

PCBs

In FY 2005-2007, the Regions should use their enforcement resources to focus on the continued phase out of PCBs as well as monitoring PCB storage and disposal facilities. As appropriate, regional PCB personnel should coordinate with waste program personnel to ensure that the transfer of Brownfield properties are in compliance with PCB rules, guidance and policies. Using the Transformer Registration information, Regions should target inspections toward users of high concentration PCBs and non-reporters. Enforcement follow-up to violations detected as a part of these inspections should promote, where possible, the retirement of PCB transformers through Supplemental Environmental Projects (SEPs). Tips and complaints should be followed-up as appropriate.

Performance Expectations

During FY 2005-2007, Regions should inspect each PCB commercial storage and disposal facility in their Region at least once so that a baseline of enforcement activity at these sites can be established. Regions may count state inspections at PCB commercial storage and disposal facilities conducted under the TSCA cooperative enforcement agreements towards meeting the Regional commitments

- **Target:** Inspect 33% of the PCB commercial storage and disposal facility universe
Commitment: Number of inspections and percent of universe (also provide universe size); provide an explanation in regional plan if below the target level.

AHERA (asbestos)

Compliance assistance will be the main focus of OECA activity for the TSCA AHERA program in FY 2005-2007 with a secondary focus on traditional enforcement as appropriate. Regions are expected to track and prioritize tips and complaints, and follow-up, as needed. Regions are also expected to follow-up on all referrals received from Headquarters, states, and tribes. Follow-up includes evaluating the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state as appropriate and track it through resolution consistent with national guidance; or 2) obtain additional information through phone calls, Federal investigation, show cause letter, subpoena if necessary and issue appropriate Federal action as appropriate; or 3) determine that follow-up is not necessary. Special attention should be given to tips alleging asbestos contamination at schools. Where EPA is the lead for inspections and enforcement, resources should be targeted based on regional experience at:

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

In non-waiver states with grants, the Regions will follow-up on violations referred by the states, and develop appropriate enforcement responses. Where applicable, the Regions should

encourage states to apply for the “waiver” program.

Performance Expectations

To meet the target numbers Regions may count state inspections by non-waiver and waiver states that meet the criteria described in the commitment discussion.

- **Target:** Conduct inspections at 5% of the charter school universe or 20 inspections, whichever is less each year.
Commitment: Number of inspections, and percent of the total universe; provide an explanation if below the target level. (Identify the number of Charter schools in each Region.)
- **Target:** Conduct inspections at 5 large LEAs (randomly select 5 individual schools from each LEA for evaluation) each year. Identify large LEAs located in the Region using a National list of the 100 largest LEAs
Commitment: Number of inspections; provide an explanation if below the target level.
- **Target:** Review past settlement agreements from 1991-1998, and conduct follow-up inspections at 5 LEAs each year.
Commitment: Number of inspections and percent of LEAs covered; provide an explanation if below the target level.
- **Target:** Conduct inspections at LEAs targeted for EJ or children’s health concerns.
Commitment: Identify number of LEAs targeted under this effort. Check against above 3 categories to see if there is overlap. These inspections may be substituted for charter school inspections.

Lead-Based Paint Program

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

Regions should screen tips and complaints for potential violations of the Lead Disclosure

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

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

Performance Expectation

- **Guidance:** Regions should determine the appropriate number of Pb 1018, and 402/404 and 406 inspections in non-authorized states.
Projection: Number of federal inspections; provide an explanation if no activity projected in this area.
- **Guidance:** In States without authorized Section 402 programs, Regions should conduct targeted Section 402 inspections of training providers and inspect work sites; this activity should be briefly described in the work plan submission as rationale for any trade-offs with Disclosure Rule or Section 406 inspection commitments.
- **Projection:** Number of federal inspections; provide an explanation if no activity projected in this area.

DATA QUALITY AND REPORTING

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

For 2005-2007, all relevant ICDS information should be completed and reported for all TSCA on-site inspections or evaluations and entered into ICIS. First-line supervisors or their designated alternate should review the ICDS forms prior to mid-year and end-of-year data entry into ICIS or manual reporting to verify completeness and accuracy.

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

PROGRAM OVERSIGHT

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

7. CLEAN AIR ACT STATIONARY SOURCE PROGRAM

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

For the FY 2005/2007 planning cycle, the MACT and PSD/NSR programs have been identified as priorities, and the discussion of and performance expectations for those programs can be found in the section on National Priority Activities.

For the remaining programs, the Regions should continue to maintain a minimum level of activity consistent with the resources available for implementing the program; the level and quality of effort by the delegated agencies; and region-specific considerations that may require greater EPA involvement. In designing these programs, the regions should take into consideration all aspects of the program (e.g., compliance evaluations, applicability determinations, assistance, incentives, enforcement), and focus on those activities that will yield the greatest benefit and are not duplicative of efforts by delegated agencies. Regardless, the Regions, should provide sufficient oversight to ensure that delegated programs are being implemented consistent with the delegation agreements.

COMPLIANCE ASSISTANCE (Sub- Objective 5.1.1)

Although there is no target for assistance activities, assistance is an appropriate tool, in particular, when there are new rules, sector specific compliance problems, and sectors with a preponderance of small businesses.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

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

COMPLIANCE MONITORING (Sub- Objective 5.1.3)

NSPS/NESHAP/MACT Programs:

Compliance evaluations should be conducted at Title V major sources and synthetic minor sources that emit or have the potential to emit emissions at or above 80% of the Title V major source threshold (80% synthetic minors) consistent with the Compliance Monitoring Strategy (CMS) policy, and the biennial plans developed by the delegated agencies. Emphasis should be placed on ensuring that delegated agencies: provide and maintain an accurate universe of sources subject to the policy; develop facility-specific CMS plans; maintain records of their compliance

monitoring activities; and report all Minimum Data Requirements (MDRs) in a timely manner consistent with the underlying Agency policies and Air Facility Subsystem (AFS). Once an evaluation is completed and a compliance determination is made, all evaluations should be reported as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The results of evaluations conducted by either the Regions or delegated agencies should not be held until the end of the fiscal year and input into the data system all at once. Regions should work with delegated agencies to ensure that they are familiar with CMS, and implement their programs consistent with the guidance.

Separate from investigations associated with the PSD/NSR Priority and discussed in the section on National Priority Activities, Regions should continue any on-going investigations, and initiate new ones as appropriate. These activities should be reported in AFS.

During the FY 2005/2007 time frame, special emphasis should be placed on implementing the National Stack Testing Guidance. It was developed in response to a report by the Office of the Inspector General (OIG) which criticized the Agency for not issuing national guidance on stack testing, or providing sufficient oversight of state and local stack testing programs. The OIG concluded that this lack of guidance and oversight had an adverse effect on the use of stack testing as a tool in determining compliance.

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

During the first year of implementation, this guidance will be treated as interim guidance to provide OC and the Regions with an opportunity to evaluate its usage and monitor any potential problems that may arise as individual states and tribes apply the provisions. Regions should ensure that delegated agencies are familiar with the Stack Testing Guidance, and implement their programs consistent with the guidance.

Performance Expectations:

- Regions should provide projections for: (1) the number of Full Compliance Evaluations (FCEs) at Title V majors, 80% synthetic minors, and other sources (as appropriate) by region and state; (2) the number of regional Partial Compliance Evaluations (PCEs); and (3) the number of negotiated state PCEs.
Target: The default in CMS is 50% of the universe for majors, and 20% of the universe for 80% synthetic minors per year. This target applies only to state agencies and if appropriate, local agencies. However, this target may vary from state-to-state depending

on what is negotiated under the CMS.

Commitment: (1) the number of Full Compliance Evaluations (FCEs) at Title V majors, 80% synthetic minors, and other sources (as appropriate) by region and state per year; (2) the number of regional Partial Compliance Evaluations (PCEs); and (3) the number of negotiated state PCEs; provide an explanation if below the target level.

- Regions should report the compliance results of all FCEs and PCEs as soon as practicable, and if feasible, in the next regularly scheduled update of AFS after an evaluation is completed and a compliance determination is made.
Performance Benchmark: Regions should ensure that 100% of the delegated agencies report the compliance results of all FCEs and negotiated PCEs (as appropriate) into AFS as soon as practicable after a compliance determination is made.
Exception: Provide an explanation if the region will not meet the benchmark
- **Performance Benchmark:** 100% of Regional FCEs shall include CFC evaluations (CFC evaluations are reported to AFS as PCEs).
- **Exception:** Provide an explanation if the region will not meet the benchmark.
- **Target:** Regions should negotiate facility-specific CMS plans with 100% of delegated agencies, periodically evaluate progress, and work with delegated agencies to revise the plans as necessary.
Commitment: Number of CMS plans negotiated, and percent of delegated agency universe covered; provide an explanation if the region will not meet the benchmark
- **Guidance:** In addition to the investigations covered by the PSD/NSR Priority, Regions should report all investigations initiated and completed in AFS, and identify the targeted air program(s).
Projection: 100% for reporting, but no specified target for the number of investigations that should be initiated. Projections should be provided by air program (e.g., MACT, NSPS); provide an explanation if no activity is projected in this area.
- Regions should utilize and encourage delegated agencies to use stack tests as a means of determining compliance. There is no target for the number of stack tests to be conducted.
Performance Benchmark: Regions and delegated states should report 100% of the stack tests and the results (pass/fail) in AFS when a compliance determination has been **made**.
Exception: Provide an explanation if the region will not meet the benchmark.

Region should collect ICDS data for all on-site FCEs and PCEs. Regional inspectors can use a manual ICDS form to collect the data or keep the data in their notes for ICIS data entry.

Title V Operating Permits Program:

Regions should continue to review Title V permits, both new ones as well as renewals, to ensure that they have adequate monitoring provisions consistent with the statute, underlying regulations, agency policies and judicial decisions. Pursuant to CMS, regions also should review all Title V compliance certifications and periodic reports when conducting an FCE. Regardless of whether an FCE is being conducted, compliance certifications should be reviewed annually, compared to the compliance status reported in AFS, and adjustments made accordingly. Regions should work with delegated agencies to ensure full coverage of all certifications. In addition, all Permit Program Data Elements (PPDEs) associated with the Operating Permit Program should be entered in a timely manner in AFS. Regions should work with delegated agencies to ensure that they are familiar with CMS, and implement their programs consistent with the guidance.

Performance Expectations:

Regions should review and comment as appropriate to the permitting authority on the compliance and enforcement provisions of a subset of the initial Title V permit applications they receive each year, as well as renewals. Regions should ensure sources subject to a pending or current CAA enforcement action or investigation are not shielded by the Title V permit, and that the draft Title V permit includes appropriate placeholder language for the applicable requirements at any affected units. Further, Regions should ensure that the draft Title V permit includes a compliance schedule addressing Consent Decree requirements.

- **Performance Benchmark:** Regions should review and comment on compliance and enforcement provisions of at least 5% of new Title V permit applications, and all permit renewals that have current or pending enforcement actions.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Review 50% of the Title V annual certifications.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Report the results of 100% of certification reviews consistent with CMS and the MDRs identified for the program (i.e., date due, date received, deviations, date reviewed, compliance status for reporting period).
Exception: Provide an explanation if the region will not meet the benchmark.

Stratospheric Ozone Protection:

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

Performance Expectations:

Performance Benchmark: Regions should include evaluations of CFCs and other ODS as part of routine FCEs to the extent the regulations apply. This does not apply to states since this program is not delegable.

Exception: Provide an explanation if the region will not meet the benchmark.

Section 112(r) Risk Management Plans (RMPs and General Duty Clause)

Although section CAA 112(r) is a Clean Air Act authority, responsibility for compliance and enforcement varies from region to region, and may not reside with the regional division responsible for the air compliance and enforcement program.

Performance Expectation:

- **Guidance:** Regions should project the number of Risk Management Plans and Section 68.220 Audits to be conducted.
Projection: Number of RMP inspections and Audits broken out by type; provide an explanation if no activity is projected in this area.

Region should collect ICDS data for all on-site 112 (r) inspections or audits. Regional inspectors can use a manual ICDS form to collect the data or keep the data in their notes for ICIS data entry.

Regions should ensure that 100% of all on-site RMP inspections or audits collect ICDS data.. Reporting of the data is described under the Data Quality and Reporting section below.

Past compliance and enforcement efforts in section 112(r) have focused on ensuring that regulated sources have submitted the required Risk Management Plans. Regions are currently shifting efforts towards ensuring that submitted plans are adequate and meet the regulatory requirements. Headquarters will continue to provide support in this area. In light of continuing concerns regarding public safety, Regions should also consider the following factors in focusing their compliance monitoring efforts:

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

During FY 2005 Headquarters will establish a workgroup to revise the section 112(r) enforcement response policy. This policy, released in August 2001, will be modified to include examples of enforcement cases Regions have taken, and will provide more concrete guidance for appropriate enforcement responses based on these examples. Regions can utilize the expedited settlement policy, issued January 4, 2005, which allows them to obtain compliance while conserving enforcement resources.

Finally, during FY 2005 Headquarters will continue discussions with Regions on future directions for the program. This discussion will include possible targeting strategies for identifying classes of sources which may warrant further investigation, and potential revisions to the section 112(r) penalty policy.

Enforcement

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

For all cases newly listed in accordance with the “Policy on Timely and Appropriate Enforcement Response to High Priority Violations (HPVs)”, Regions should adhere to the requirements of the Policy, and ensure that all MDRs are reported in AFS in a timely manner. Regions should work with delegated agencies to ensure that they are familiar with the HPV Policy, and implement their programs consistent with the guidance.

Performance Expectations:

- **Performance Benchmark:** Regions should evaluate and bring to closure 100% of any self-disclosures received by a Region consistent with the national policy.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Federal Case Backlog -- Regions should settle or litigate cases issued in years prior to FY 2005 and ensure investigation and issuance of appropriate action for any open tips, complaints, or referrals received by EPA, and work with the Department of Justice and EPA Headquarters as appropriate to develop, file, prosecute, and/or settle outstanding judicial and administrative actions.
Exception: Provide an explanation if the region will not meet the benchmark
- **Performance Benchmark:** Regions should exercise EPA’s 1997 clarified penalty authority against Federal agencies for CAA violations in appropriate circumstances.
Exception: Provide an explanation if the region will not meet the benchmark
- **Performance Benchmark:** Regions should report 100% of MDRs accurately and in a timely manner in AFS consistent with the HPV Policy, and ensure that delegated agencies do the same.
Exception: Provide an explanation if the region will not meet the benchmark

DATA QUALITY AND REPORTING

Data is an integral part of the CAA compliance and enforcement program; therefore, it is essential that Regions and delegated agencies enter complete and accurate information into the national data base in a timely manner. Complete, accurate and timely data is necessary for EPA, delegated agencies and the public to evaluate programs and institute corrections. For a complete list of MDRs for the program, please consult CMS, the HPV Policy, and the Information Collection Request (ICR) for the program. A summary of the requirements can be found at the following website: <http://www.epa.gov/compliance/planning/data/air/mdrshort.pdf>

As stated previously, once an evaluation is completed and a compliance determination is made, all evaluations should be reported as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The results of evaluations conducted by either the Regions or delegated agencies should not be held until the end of the fiscal year and input into the data system all at once. Regions should work with delegated agencies to ensure that they are familiar with the data aspects of CMS, the HPV Policy, and the ICR, and implement their programs consistent with them. Agreements with delegated agencies to provide complete, accurate and timely data should be incorporated in documents such as State Enforcement Agreements (SEAs), Performance Partnership Agreements (PPAs) or Section 105 grant agreements.

Regions should ensure that all necessary compliance data is provided for the Inspection Conclusion Data Sheet (ICDS), and reported either manually or through the Integrated Compliance Information System (ICIS). In addition, Regions should ensure that all necessary enforcement data is reported in ICIS as appropriate. Annual reporting guidance will be provided in the annual Enforcement and Compliance Reporting Process memorandum. (Refer to Section III.D.)

For 2005-2007, regions must report all ICDS data collected from on-site FCEs and PCEs and RMP inspections and audits. Regions can either submit the one-page ICDS Reporting Form or enter the data into ICIS. If the manual reporting form is used, first-line supervisors or their designated alternate should review the ICDS data. If the regions enter the data into ICIS, the first-line supervisor or alternate should verify that the information is entered into ICIS as soon as possible after completion of the inspection.

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

Performance expectations:

- **Performance Benchmark:** Regions should ensure that delegated agencies have written agreements to provide complete, accurate, and timely data consistent with the Agency policies and ICR.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark** Regions and delegated agencies should enter all MDRs in AFS

consistent with the Agency policies and the ICR. If for some reason a delegated agency does not agree to enter the MDRs, the Region is responsible for ensuring that the data is entered into AFS in a timely manner. If the Region is responsible for entering state/local/tribal data, identify the agency.

Exception: Provide an explanation if the region will not meet the benchmark.

PROGRAM OVERSIGHT

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

Performance Expectations:

- **Performance Benchmark:** Regions should evaluate annually whether compliance monitoring and enforcement commitments were met, and if not, why not. Regions should evaluate how these commitments compare to previous years.
- **Exception:** Provide an explanation if the Region will not meet the benchmark.
- **Target:** Regions should conduct in-depth evaluations of delegated programs consistent with CMS.
- **Commitment:** At a minimum, one delegated agency per year and the delegated agency should be identified.

8. RCRA PROGRAM

RCRA Hazardous Waste Subtitle C Program

EPA is committed to ensuring that hazardous waste is managed in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement

activities will focus on those facilities posing the greatest risk to human health and the environment. However, all identified non-compliance with RCRA Subtitle C should be addressed by the Agency in accordance with its policies governing enforcement and compliance monitoring.

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

Core Program Elements

- Federal facilities under RCRA § 3007(c), and as incorporated by the FFCA.
- State and local facilities identified under RCRA § 3007(d).
- Treatment, Storage and Land Disposal facilities under RCRA §3007(e):
 - maintaining records of all hazardous waste which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;
 - ☐ satisfactory reporting and implementation of the manifest system;
 - ☐ treatment, storage, or disposal of all such waste received by the facility pursuant to operating methods, techniques, and practices in accordance with the law
 - ☐ establishing contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste
 - the maintenance of operation of facilities, including but not limited to training for personnel, financial responsibility (including financial responsibility for corrective action) and the prevention of fires and explosions,
 - ☐ compliance with requirements for design, construction, and permitting of such hazardous waste treatment, disposal, or storage facilities; and
 - ☐ compliance with permitting requirements.
- Generators under RCRA § 3007(a):
 - ☐ proper characterization of the hazardous waste;
 - ☐ furnishes information on the general chemical composition of hazardous waste to persons transporting, treating, storing and disposing of such wastes;
 - ☐ recordkeeping on the management and disposition of waste;
 - ☐ proper labeling and identification of waste for storage, transport and disposal;
 - ☐ use of proper containers, tanks and drip pads for the hazardous waste;
 - ☐ use of the manifest system and all other means necessary to assure that hazardous waste is sent to the appropriate treatment, storage and disposal facility; and
 - ☐ submission of reports to the Administrator reporting the waste generated.
- Transporters under RCRA § 3007(a):

- recordkeeping;
- ☐ properly labeled waste;
- ☐ use of the manifest system;
- ☐ proper management of hazardous waste during transportation;
- ☐ hazardous waste is delivered to treatment, storage and disposal facility that is permitted by law to take such waste.

RCRA Underground Storage Tank Subtitle I Program

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

Regions should maintain an enforcement presence concerning leak prevention, leak detection, corrective action and closure, and financial responsibility violations⁷. Owners and operators that do not meet UST requirements are not only in violation of Federal and state laws but also have USTs that present a threat of release (or have had a release requiring corrective action). These non-compliant USTs are gaining an economic advantage over competitors that are in compliance with environmental laws. These efforts will ensure that RCRA Subtitle I regulated facilities properly prevent and detect releases and take appropriate corrective action when releases occur.

The goal of State and Federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, Federal compliance assurance and enforcement activities will complement state activities, where and as appropriate. Regions should refer to the Federal facilities section of this attachment (Section 9) for guidance on including Federal facilities in core program activities where applicable.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

RCRA Hazardous Waste Subtitle C Core Program

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

RCRA Underground Storage Tank Subtitle I Program

⁷Regions should focus financial responsibility compliance monitoring activities in states that do not have a state fund.

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

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Monitoring

RCRA Hazardous Waste Subtitle C Core Program

The RCRA hazardous waste core program includes the compliance monitoring activities set forth in Sections I and II below. Both State and Federal compliance monitoring activities may be required in implementing the activities in Section I (e.g., maintaining the annual level of generator inspections). To facilitate accomplishment of Agency FY 2005-2007 priority activities, achievement of the level playing field principle and oversight of state compliance assurance and monitoring activities, Regions should maintain a Federal presence in the hazardous waste core program, conducting the compliance monitoring activities set forth in Section II. Additionally, Regions and States (where appropriate) will implement activities associated with the statistically valid non-compliance rate project (i.e., at foundries).

In light of continuing concerns regarding protecting human health and the environment, Regions should also consider the following factors in focusing their compliance monitoring efforts:

- persons that generate, transport, treat, store, or dispose of significant quantities of hazardous wastes;
- proximity of facilities that generate, transport, treat, store or dispose of hazardous wastes to population centers or environmentally sensitive areas;
- persons that generate, transport, treat, store or dispose of hazardous waste which due to concentration or acute characteristics (e.g., acute toxicity) significantly increases the risk to human health or the environment; and
- recalcitrant or repeat violators.

In each fiscal year, the Regions (in consultation with OECA) may conduct fewer or additional compliance monitoring activities if it is determined that such a deviation is warranted.

Performance Expectations

The States and EPA Regions should work together to determine the appropriate mix of Federal and State compliance monitoring activities to meet hazardous waste core program activities. In making its determinations, each Region should examine the compliance status of facilities within its Region.

Regions should include RCRA Section 6002 inspections in conjunction with inspections of Federal facilities in accordance with Executive Order 13101 and Federal Facilities Enforcement Office (FFEO) guidance. This applies to both combined state and federal core activities and federal core activities. Results should be reported to FFEO.

1. Combined State and Federal Core Activities

- A. **Statutory mandated inspections** - Targets may be modified as Regions work with states and tribes to identify other facilities that pose a risk to human health or the environment.

Inspect ANNUALLY: 20% of Federal treatment, storage, and disposal facilities (TSDFs) under SWDA§3007(c), as amended by the Federal Facility Compliance Act, or arrange with an authorized state program that has been approved to carry out the RCRA 3007 (c) inspections.

Target: 100% of universe every five years, instead of annually, provided that the following criteria are met:

1. Federal TSDF has received annual EPA/state inspection within the last five fiscal years,
2. Federal TSDF is not a HPV, and
3. Federal TSDF has no open or unresolved enforcement actions.

These criteria should allow Regions and states to target their resources regarding inspections of TSDFs and allow flexibility to shift resources for inspecting Federal Large and Small Quantity Generators (LQGs, SQGs), and Civilian Federal Agencies (CFCS).

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

Inspect ANNUALLY: State and local facilities identified under SWDA § 3007(d).

Target: 100% of universe.

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

Inspect ONCE EVERY TWO YEARS: Treatment, storage and disposal facilities under SWDA §3007(e).

Note: A TSDF that is not a land disposal facility and is no longer receiving, storing, or treating hazardous waste, and the only activity associated with the TSDF is groundwater monitoring, may have physical inspections replaced by record reviews of the sampling/analysis data and the quarterly/annual groundwater monitoring reports generated from the detection monitoring activities. Where information from the reports indicates a potential problem, or there are changed circumstances, a physical inspection would generally be warranted.

Target: 50% of universe.

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

Inspect ONCE EVERY THREE YEARS: Land disposal facilities under SWDA §3007(e).

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

Target: 33% of universe.

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

B. Generators (LQGs):

Target: Annually inspect 20% of the large quantity generator universe except for those states that have more than 1000 LQGs. States with more than 1000 LQGs may negotiate with the Region the appropriate number to inspect per year as long as a minimum of 200 LQGs are inspected and all LQGs are inspected within five years.

Regions and states may substitute inspections of SQGs and conditionally exempt SQGs as long as the reason for such substitution is reasonable and an explanation is provided. At a

minimum, for every one LQG inspection for which the region (or state) requests substitution the region (or state) must perform 3 SQG or 3 conditionally-exempt small quantity generators (CESGQ) inspections.

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

2. Federal Core Activities

A. Facilities/Units that are not part of an authorized state program.

Inspect ANNUALLY: 1) 20% of Federal treatment, storage, and disposal facilities (TSDFs) under SWDA §3007(c), as amended by the Federal Facility Compliance Act, or arrange with an authorized state program that has been approved to carry out the RCRA 3007 (c) inspections.

Target: 100% of universe every five years, instead of annually, provided that the following criteria are met:

1. Federal TSDF has received annual EPA/state inspection within the last five fiscal years,
2. Federal TSDF is not a HPV, and
3. Federal TSDF has no open or unresolved enforcement actions.

These criteria should allow Regions and states to target their resources regarding inspections of TSDFs and allow flexibility to shift resources for inspecting Federal Large and Small Quantity Generators (LQGs, SQGs), and Civilian Federal Agencies (CFCS).

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

Inspect ANNUALLY: State and local facilities identified under SWDA § 3007(d).

Target: 100% of universe.

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

Inspect ONCE EVERY TWO YEARS: Treatment, storage and disposal facilities under SWDA §3007(e).

Note: A TSDF that is not a land disposal facility and is no longer receiving, storing, or treating hazardous waste, and the only activity associated with the TSDF is groundwater monitoring, may have physical inspections replaced by record reviews of the sampling/analysis data and the quarterly/annual groundwater monitoring reports generated from the detection monitoring activities. Where information from the reports indicates a

potential problem, or there are changed circumstances, a physical inspection would generally be warranted.

Target: 50% of universe.

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

Inspect ONCE EVERY THREE YEARS: Land disposal facilities under SWDA §3007(e).

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

Target: 33% of universe.

Commitment: Number (and percent of universe) of regional and state inspection broken out by state; provide an explanation if below the target level.

B. Generator (LQGs)

Target: Annually inspect at least 6 generators per state.

The regions are encouraged to perform these inspections for the following: national priority sectors, to support state referrals, to address illegal recycling, entities with violations in more than one state, environmentally sensitive environments, areas subject to environmental justice concerns, and particularly recalcitrant violators. Regions may substitute inspection of small quantity generators and conditionally exempt small quantity generators as long as the reason for such substitution is reasonable and an explanation is provided. At a minimum, a region (or state) may request the substitution of one LQG for 3 SQGs or 3 CESGQs.

Commitment: Number of generator inspections by state; provide an explanation if below the target level.

RCRA Underground Storage Tank Subtitle I Program

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

Recommended criteria for identifying facilities to be inspected under the UST program include:

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

Performance Expectations

Guidance: Regions should project the number of UST facilities to be inspected (by the region, per state) and the number of UST facilities inspected by the Region in Indian Country and at Federal Facilities.

Projection: Number of Regional UST inspections broken out by state, Indian Country, and Federal Facilities; provide an explanation if no activity projected in this area.

Enforcement

RCRA Subtitle C Hazardous Waste Program

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

RCRA Underground Storage Tank Program

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

Imminent and Substantial Endangerment

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

DATA QUALITY AND REPORTING

RCRA Hazardous Waste Subtitle C Core Program

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

Regions should enter their compliance assistance activities in ICIS; however, if the Region conducts on-site compliance assistance they can instead record the activity in RCRAInfo. States are not able at this time to enter their compliance assistance into ICIS so they should continue to use RCRAInfo. Headquarters will generate RCRA compliance assistance numbers for Federal activities out of both ICIS and RCRAInfo.

All EPA-led inspections conducted under the 3007 authority should be reported on the Inspection Conclusion Data Sheet (ICDS) even if the inspection discloses that the facility is not a Subtitle C facility..

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

RCRA Underground Storage Tank Subtitle I Program

For 2005-2007, all federal enforcement activity should be entered into ICIS. Inspection Conclusion Data Sheet (ICDS) forms should be completed for all federal inspections, including UST Expedited Settlements⁸ and Case Conclusion Data Sheets (CCDS) should be completed for all federal UST cases. OECA is striving to have all federal inspections that are currently reported manually entered into ICIS during this planning cycle and will provide separate guidance on UST inspection reporting through the annual Enforcement and Compliance Reporting Process memorandum. (Refer to Section III.D.)

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

⁸Expedited Settlements include UST field citations.

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

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

PROGRAM OVERSIGHT

RCRA Hazardous Waste Subtitle C Core Program

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

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

RCRA Underground Storage Tank Subtitle I Program

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

9. FEDERAL ACTIVITIES PROGRAM

The Federal activities core program for FY 2005-2007 is built around the following major areas:

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

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

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

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

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

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

Performance Expectations

- **Performance Benchmark:** 70 percent of the significant impacts identified by EPA during the NEPA review of all major proposed Federal actions will be mitigated in order to preserve air and water quality, wetlands, aquatic and terrestrial habitats, and endangered species; to protect Environmental Justice communities; and to prevent degradation of valued environmental resources.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** 90 percent of EPA projects subject to NEPA Environmental Assessment or Environmental Impact Statement requirements (water treatment facility project and other grants, new source National Pollutant Discharge Elimination System permits and EPA facilities) result in no significant environmental impact.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Guidance:** Regions are to input the results of their §309 EIS reviews and NEPA compliance actions into the Lotus Notes EIS Tracking Database maintained by HQ OFA.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

- Improve environmental performance and cooperation with Goal 6 of the U.S./Mexico

Border 2012 plan (Regions VI and IX).

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

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

Import/Export Program: All regions will review the permit and compliance status of U.S. receiving facilities in connection with the notifications for the import of hazardous waste they receive from HQ EPA and, based on their review, recommend consent or objection to notifications within the time periods allowed under applicable international agreements. Headquarters will process notifications for import and export of hazardous waste to ensure compliance with domestic regulations and international agreements; consent or object to import notifications and acknowledge consent/objection to export notifications; track the flow of hazardous waste both in and out of the United States based on manifests received from the Bureau of Customs and Border Protection; and conduct compliance monitoring and prepare memoranda of referral for appropriate enforcement action.

Performance Expectations

- **Performance Benchmark:** Regions will report to the International Compliance Assurance Division all assistance provided to the Bureau of Customs and Border Protection regarding any point of entry into the United States.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Regions will review and recommend consent or objection for 100% of the notifications of intent to import hazardous waste within the time periods prescribed under applicable international agreements.
Exception: Provide an explanation if the region will not meet the benchmark.
- **Performance Benchmark:** Regions will take appropriate enforcement action against apparent violations of law relating to trans-boundary movements of hazardous waste identified in the memoranda of referral.
Exception: Provide an explanation if the region will not meet the benchmark.

10. FEDERAL FACILITIES ENFORCEMENT AND COMPLIANCE PROGRAM

Background

The FY 2005-2007 activities outlined below were developed to advance activities outlined in the National Federal Facilities 2004 Program Agenda developed by the Federal Facilities Enforcement Office (FFEO) and the Regions. The 2004 Program Agenda was developed to guide and focus EPA's overall Federal facilities enforcement and compliance activities. The FY 2005-2007 activities outlined below are an outgrowth of the 2004 Program Agenda. Each target, commitment, and performance benchmark detailed below is required to be completed in each fiscal year, beginning with FY2005.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

Performance Expectations

- *Compliance Assistance Activities*

Each region will complete at least one compliance assistance activity (such as a seminar, training, workshop, education/outreach activity, etc.) that includes information about (a) environmental management system (EMS) implementation (EMSs are required under Executive Order (EO) 13148) and (b) toxic chemical use and release reductions (reductions required by EO 13148). One compliance assistance activity can include both (a) and (b) or Regions can conduct multiple activities so long as both (a) and (b) are covered in the year.

Target: Each Region will conduct at least one compliance assistance activity for Federal facilities that includes information on:

- A. EMS implementation and
- B. Toxic chemical use and release reductions.

Commitment: Number of compliance assistance activities to be completed will include EMS implementation and toxic chemical use and release reductions; provide an explanation if below the target level.

- *Environmental Management Reviews (EMRs)*

Target: Each Region will perform three Environmental Management Reviews (EMRs) at Federal facilities.

Commitment: Number of EMRs to be performed; provide an explanation if below the target level.

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

Regions should refer to the Compliance Incentives activities description in Section III -

Core Program Activities.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Compliance Monitoring

Performance Expectations

- *Multi-media inspections*

Target: Each Region will conduct two multi-media inspections, selected through targeting criteria developed by FFEO and the Regions. Regions may substitute four single media inspections in lieu of one multi-media inspection.

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

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

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

Target: Conduct inspections at 20% of Region's universe of Federal facility RCRA treatment, storage or disposal facilities, or arrange with an authorized state program that has been approved to carry out RCRA 3007 (c) inspections to conduct such inspections.

Commitment: Number of inspections to be conducted (identify Region and state inspections), and percent of RCRA universe this represents; provide an explanation if below the target level.

NOTE: These RCRA inspections, if done by the Region, can qualify as part of a multi-media inspection or as one of the four single media inspections. (See Multi-media inspections above)

- *Single media inspections*

Target: In addition to the RCRA TSDF inspections, perform five single media inspections of Federal facilities (in addition to any single media inspections conducted under Multi-media inspections above and in addition to the RCRA TSDF inspections). Of these five inspections, at least two should be Clean Water Act inspections.

Commitment: Number of Federal facility inspections to be conducted (in additional to any single media inspections conducted under Multi-media inspections above); provide an explanation if below the target level.

- *RCRA Section 6002 Compliance (Executive Order 13101)*

Performance Benchmark: EPA RCRA inspectors shall complete Sec. 6002 survey forms for 100% of EPA RCRA inspections at Federal facilities, and return the form to FFEO within two weeks of completing the inspection.

Exception: Provide an explanation if the region will not meet the benchmark.

Performance Benchmark: EPA RCRA inspectors shall give the Sec. 6002 *facility* survey to a representative at the inspected facility and request their completion of the survey and mailing to FFEO.

Exception: Provide an explanation if the region will not meet the benchmark.

Enforcement

FFEO strongly encourages the regions to take swift and meaningful enforcement actions to improve compliance at Federal facilities.

Performance Expectations

- **Performance Benchmark:**
For the multi-media inspection initiative, by the end of the fiscal year following the fiscal year in which the inspection was performed, Regions must report to FFEO through the anticipated on-line commitment system (or report manually if such system is not available): (1) any follow-up that was undertaken to address violations or (2) decision not to undertake any inspection follow-up.
Exception: Provide an explanation if the region will not meet the benchmark

INTEGRATED STRATEGIES

FFEO is advocating that integrated strategies be utilized where appropriate to coordinate enforcement, compliance assurance, and stewardship activities that all target a particular sector. Integrated strategies include activities focused on (i) preventing pollution and fostering long-term stewardship, (ii) assisting facilities to achieve and maintain compliance, (iii) inspecting and monitoring compliance, and (iv) prosecuting enforcement actions to correct and deter non-compliance. Examples of such activities include Environmental Management Reviews (EMRs), compliance assistance seminars or workshops, or inspections.

In FY04, FFEO and the Regions developed an EPA-Veteran's Health Administration (VHA) integrated strategy. FY2004 activity consisted primarily of compliance assistance activity. FFEO anticipates that the VHA strategy for 2005 will be shifting from compliance assistance to

focus on monitoring and enforcement, pollution prevention, and voluntary programs. As Regions plan their integrated strategy activities for 2005, we urge them to be cognizant of this anticipated emphasis shift.

As a result, we are requesting that for FY05, each Region should perform at least two activities that support the EPA-VHA integrated strategy or another integrated strategy, such as a possible NPDES compliance strategy, subsequently developed by FFEO and the Regions.

Performance Expectations

- **Target:** Participate in at least two activities that supports one or more Federal facilities integrated strategies. These activities may fulfill several other core requirements simultaneously such as conducting inspections, EMRs, or compliance assistance seminars.
- **Commitment:** Number of integrated strategy activities the Region will participate in; provide an explanation if below the target level.

DATA QUALITY AND REPORTING

Reporting guidance will be provided in the annual Enforcement and Compliance Reporting Process memorandum. (Refer to Section III.D.).

For 2005-2007, all Federal facility inspections, enforcement activities, and compliance assistance activities should be entered into ICIS, Inspection Conclusion Data Sheet (ICDS) forms should be completed for all federal facility inspections, Case Conclusion Data Sheets (CCDS) should be completed for all federal facility enforcement cases.

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

For 2005-2007, Regions must report manually to FFEO all multi-media inspections completed at Federal facilities at the end of the fiscal year. The region is required to report the following:

Name of Facility, City, State
Dates of on-site inspection
Media or Statutory Program Investigated
Was State a Participant (Y/N)
Which Agency was Lead (EPA/State)

PROGRAM OVERSIGHT

Watch List

In reviewing regional/state performance, EPA will consider the following data that is currently reported into ICIS will be used to measure regional/state performance:

- Number of HPVs/SNCs and percentage of universe;
- Number and percentage of universe addressed and resolved in a timely and appropriate manner;
- Number of Watch List facilities per region and state.

11. MULTIMEDIA AND RAPID RESPONSE PROGRAM

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

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

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

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

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

activities.

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

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

Performance Expectations

With regard to compliance incentives, Regions will be expected to report on the number of voluntary disclosures received and resolved pursuant to the Audit Policy.

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Compliance Monitoring

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

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

Performance Expectations

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

Enforcement

(a) General Approach

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

- against single facilities, where entire industrial processes at a facility are examined as a

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

(b) Rapid Response Program

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

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

DATA QUALITY AND REPORTING

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

PROGRAM OVERSIGHT

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

12. ENVIRONMENTAL JUSTICE PROGRAM

Executive Order 12898⁹ directs the Environmental Protection Agency (EPA) and other federal agencies to make environmental justice part of their mission, to the greatest extent practicable and permitted by law, by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects on minority and low-income populations.

Consistent with that mandate, the environmental laws that EPA implements and enforces direct it to protect all people from significant environmental hazards and risks. The Agency is keenly aware that minority and/or low-income and other sensitive populations frequently confront special environmental burdens caused by a host of factors including, but not limited to, those relating to: health, environmental conditions, and compliance assurance activities. Helping to satisfy its environmental justice mission to protect all people, including minority and/or low-income populations, the EPA accounts for these and other issues under the environmental statutes that it implements and enforces. For example, OECA has already explicitly established environmental justice as a targeting factor under the Clean Water Act and the Resource Conservation and Recovery Act.¹⁰ Further, OECA has established environmental justice as a penalty consideration¹¹ and as a factor in approving Supplemental Environmental Projects in settlements.¹²

On April 15, 2003, former OECA Assistant Administrator, JP Suarez outlined the Smart Enforcement approach to compliance assurance, requiring OECA to target compliance and enforcement efforts strategically, to ensure that the most significant impacts to human health and the environment are addressed first. The directive identifies environmental justice as a cornerstone

⁹“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” Executive Order, February 11, 1994

¹⁰ Memorandum, FR: Assistant Administrator, “Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows,” Section IV, B.2. “Priorities for SSO Enforcement Response” (April 27, 2000) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns). <<http://www.epa.gov/compliance/resources/policies/civil/cwa/strat312.pdf>>;

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

¹¹ See Memorandum from Steven Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance (September 30, 1997).

¹² See, e.g., Environmental Protection Agency, Supplemental Environmental Projects Policy 13-14 (May 1, 1998).

of the Smart Enforcement program. Notably, OECA's application of Smart Enforcement concepts provides for the use of existing environmental, compliance, and health data to target and prioritize compliance assurance activities to address significant environmental problems and to identify problems in communities with environmental and public health concerns.

Subsequently, OECA's Principal Deputy Assistant Administrator, Phyllis Harris, issued OECA's Environmental Justice Policy.¹³ This policy further underscores the importance of environmental justice in program implementation.

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

1. *Risk Reduction / Protect Environmental and/or Public Health* - To ensure equal implementation of environmental laws to achieve significant risk reduction which will improve the environment and/or public health of affected communities.
2. *Outreach and Communication* - To provide opportunities for meaningful involvement and ensure effective communication between the Agency decisionmakers and stakeholders, including all affected communities.
3. *Training* - To provide training for EPA managers and staff to enable them to incorporate environmental justice considerations into their decisionmaking process.
4. *Federal, State, Tribal, and Local Government Coordination* - To ensure effective coordination across all levels of government to address the environmental and public health concerns of affected communities.
5. *Grants and Contracts Administration* - To promote effective and efficient management of all grants and contracts to ensure that the environmental and public health concerns of affected communities are addressed.
6. *Environmental Justice Assessment* - To conduct an assessment of the environmental justice indicators within affected communities as part of the decisionmaking process.

Online commitments, Regional workplan commitments, and state performance partnership agreements (or similar EPA-State/Tribe Agency agreement) and grants for FY 2005/2007 should be consistent with OECA's and each Region's respective Environmental Justice Action Plan.

¹³ "OECA Environmental Justice Policy" Memorandum, January 12, 2004.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

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

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

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

COMPLIANCE MONITORING (Sub-objective 5.1.3)

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

Performance Expectations

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

- 1) The public has access to compliance and enforcement documents and data, particularly in high risk communities, through multimedia data integration projects, other studies, and communication/outreach activities;
- 2) Public input is solicited, as appropriate, in the identification of facilities or areas of concern (*i.e.*, through periodic listening sessions, hotlines, outreach efforts, etc...) and during other appropriate phases of the compliance assurance process;
- 3) EPA's policies, programs and activities, including public meetings, address the concerns of the potentially affected populations, including those living in minority and/or low-income areas;
- 4) Noncompliance is deterred and environmental and human health improvements are achieved by: (a) maintaining a strong, timely and active enforcement presence across all areas, including those with minority and/or low-income populations, and (b) targeting compliance activities in areas with high levels of noncompliance;
- 5) Enforcement and other compliance assurance actions are prioritized using environmental, compliance, and health data so as to minimize risk to human health and the environment and to maximize compliance, consistent with the goals of smart enforcement;
- 6) When possible, enforcement actions result in environmental or human health improvements, through pollution reductions and/or physical or management process changes;
- 7) When practical, participate in collaborative problem solving with other Federal, state, tribal, and/or local agencies to address environmental justice concerns; participate in the environmental justice training efforts; and continue to participate in national, state, Tribal, or local dialogue around the issue of environmental justice (*i.e.*, NEJAC, listening sessions, etc...); and
- 8) Consider issues such as cumulative risk, health disparities, and appropriate demographic issues in the context of gravity based penalties, case development, referrals to the Department of Justice, and Supplemental Environmental Projects.

Enforcement Actions

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

Program Leadership and Evaluation

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

13. TRIBAL PROGRAM

EPA's enforcement and compliance assurance program works with federally-recognized Indian tribes (tribes) to employ the Smart Enforcement approach to promote compliance through the use of appropriate compliance and enforcement stewardship in Indian country and in areas outside of Indian of country where tribes and tribal members have recognized rights and interests protected by treaty, statute, judicial decisions or other authorities, including Alaska. (hereinafter Indian country). Whether implemented directly by EPA or an approved tribe, selecting the appropriate tools - compliance assistance, incentives, monitoring, and enforcement - can provide important gains in environmental and human health protection. During FY 2005-2007, OECA and the regions intend to continue to increase their presence in Indian country.

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

Following are the activities that OECA and the regions anticipate undertaking in FY 2005-2007 to implement the *Strategy*.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

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

professionals.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

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

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

Performance Expectations

The regions will be asked to report on FY 2005-2007 Tribal Performance Measures. Specific reporting requirements will be issued at a later date.

- A. Regional Enforcement Coordinators should be directly involved in discussing the types of projects to fund with EPA's enforcement and compliance assurance tribal resources; these resources are distributed by OECA's Compliance Assistance and Sectors Programs Division (CASPD) each fiscal year. EPA's enforcement and compliance assurance tribal resources are available to directly or indirectly support the compliance assurance and enforcement program in Indian country related to: (1) solid waste landfills consistent with section 8001(a) of the Resource Conservation and Recovery Act (RCRA); and (2) activities consistent with a particular (or multiple) federal environmental statutory or regulatory provision(s). Regions use a variety of mechanisms - grants, contracts, cooperative agreements, and interagency agreements - to support these activities.
- B. Regional enforcement programs should report project summary and measurement information about the enforcement and compliance assurance tribal resources in work

planning documents or similar reports back to CASPD.

- C. OECA is currently developing/adapting additional, appropriate performances measures. These measures will be consistent with the *Strategy* and the FY2005-2007 national and regional priorities.

DATA QUALITY AND REPORTING

Complete and reliable information about the compliance status of facilities in Indian country is important to the success of enforcement and compliance assurance activities. Accurate information enables EPA and tribes to understand and determine their enforcement and compliance priorities. In addition to encouraging tribes to input and maintain data, EPA intends to work with tribes to help ensure that national enforcement and compliance data systems provide the accurate, timely and relevant information needed for effective prioritization. In FY, 2005-2007 the regions should use data developed through regional inspections and existing EPA databases to help identify and address potential areas of noncompliance.

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

14. CRIMINAL ENFORCEMENT, FORENSICS, AND TRAINING CORE PROGRAM

Criminal enforcement is the Agency's response to suspected or known illegal or culpable conduct that presents imminent and substantial endangerment to human health and/or the environment. It is designed to deter others from future similar illegal behavior and to maintain a level playing field in which violators do not reap competitive advantage from criminal behavior. The criminal enforcement core program maintains a criminal enforcement presence across all program areas.

Criminal Investigation Division (CID)

The purpose of the criminal enforcement core program is to more effectively integrate criminal enforcement with the regional enforcement programs. To achieve this purpose, each region will continue to coordinate and cooperate closely with its respective Special Agents-in-Charge (SAC) of the region's CID Area Offices.¹⁴ This includes, but is not limited to, the identification, investigation and prosecution of criminal violations of Federal environmental laws, with a particular emphasis on identifying criminal activity which victimizes environmental justice communities. In order to promote integration and cooperation between each region and CID, the regions will:

1. Identify leads appropriate for criminal investigations based upon the criteria in the January 12, 1994, Memorandum on the Exercise of Investigative Discretion. This document will be distributed to and assimilated by all Office of Regional Counsel (ORC) attorneys and regional enforcement staff;
2. Submit appropriate leads – including cases or aspects of cases that were initially developed for administrative or civil enforcement but later reveal potential criminal wrongdoing – to the regional screening committee where discussions and decisions will be made as to whether violations will be pursued administratively, civilly, or criminally;
3. Provide technical support to CID investigations, provide Regional personnel as witnesses when necessary, and maintain legal staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crimes; and
4. Ensure that all environmental measurements or samples used to support EPA criminal investigations will be gathered, recorded and analyzed in a manner that complies with the EPA quality assurance system, and that all evidence collected will be handled and kept

¹⁴The CID field office structure is currently being re-evaluated as part of the implementation of the December 15, 2003 OCEFT Management Study. Several of the criminal program-regional relationships described in this section may be revised or refined further once final decisions regarding the future structure of the field offices has been made by senior OCEFT and OECA management.

secure in accordance with EPA policies for the custodial management of evidence.

National Enforcement Investigations Center (NEIC)

The NEIC will continue to direct its new activities toward national and regional initiatives and priorities as described in the OECA program guidance and the regional plans. NEIC project selection will also be guided by the Assistant Administrator's priorities, 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 NEIC's 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 previous years, including case preparation and enforcement support.

National Enforcement Training Institute (NETI)

NETI is responsible for developing, coordinating, publishing and delivering training for federal, state, local and tribal attorneys, inspectors, civil and criminal investigators, compliance assistance providers, and technical experts in all phases of environmental enforcement. NETI was established by the 1990 Pollution Prosecution Act and is EPA's only Congressionally mandated training entity. NETI promotes a balanced training approach using traditional classroom training utilizing HQ and Western campus facilities, both CD and Web based distance learning tools, NETI Online, a multi-media Practical Exercise site to be operational in late 2004 and partnerships with other organizations to reach a broad audience.

NETI is currently constructing a national profile of environmental enforcement training activity. This profile will help NETI assess its support services, resource allocations, outreach needs and development of training related to outcome measures that would benefit both HQ (OECA) and regional training programs. In April 2002, NETI formally assumed the responsibility of identifying all environmental enforcement training provided by EPA, including both HQ (OECA) and the regions. This includes prospective planning based on core program needs, national priority integration and strategic objectives in order to effectively market training opportunities and avoid duplication of effort. The goal of this approach would be a comprehensive National Enforcement Training Plan. In addition, NETI will continue its retrospective review of activities and statistics for end-of-year reporting and GPRA purposes.

An important part of this effort is the EPA Enforcement Training Network, which includes representatives from each OECA office and every region. These contacts are vitally important to the effective coordination of training efforts. Network members should work with appropriate management/technical staff, and interactively within the Enforcement Network to provide the following information:

- By August 30, 2004 - Regions are requested to submit their proposed course plans and/or

course delivery support requests for the FY 2005 Workplan cycle. Please provide the name of the course, a brief description, support needed if any, a course contact name, phone number and email address. (In accordance with proposed electronic submission format)

- By September 15, 2004 - NETI staff will compile regional training plans, course delivery support needs and assess plans to meet core training needs. NETI will distribute consolidated report to regions and OECA offices.
- By October 10, 2004 - NETI will conduct a meeting of regional and HQ enforcement training contacts to discuss a proposed national training plan and tentative support commitments.
- November/December 2004 - NETI publishes a National Course Catalog for Calendar Year 2005.

SECTION IV.

FY 2005 OECA Workplan Submission Instructions

Following release of the final OECA NPM Guidance, regions should continue discussions with their states and tribes to determine draft commitments, projections, and exceptions for the targets, guidance, and performance benchmarks outlined in this guidance. Current schedules call for regions to enter their draft targets into the online system by July 1, 2004. NPMs can then review draft regional targets to ensure that all regional targets together “roll up” to result cumulatively in appropriate annual national targets. Headquarters and the regions will have approximately 2 months (July 1 through September 1) to resolve any issues and finalize annual regional targets. During this same time, regions will be engaging in negotiations with states and tribes to complete the grant process (PPAs, PPGs, and Categorical Grants), including translating regional targets into formal commitments supported by state-by-state agreements. All commitments should be final by September 1, 2004; all grants should be final by October 1, 2004.

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

A. Annual Commitment System

As noted in the discussion of workplan submission instructions above, regions are expected to enter their numerical commitments for both the core program and national priorities, along with any accompanying narrative explanations for trade offs or exceptions to the commitments, into an online system. The Office of Chief Financial Officer (OCFO) is coordinating development of an online system that regions and national programs will use to agree on annual performance commitments consistent with the Agency’s *Strategic Plan* and Regional Plans. (Note that while National Program Guidance will cover 3 years, the commitments entered into the online system are 1-year commitments.) The system will enable headquarters and regional managers to view annual regional commitments across all five programs. Agreed-upon annual performance commitments will be appended to final Regional Plans and posted on the Internet in October 2004.

B. Support and Training Requests

NEIC

The Regions should continue to send their annual requests for specific civil inspection, investigative, and technical support to NEIC’s Civil Program Coordinator. NEIC will evaluate the requests in order to develop the final list and schedule of support activities. To initiate discussions necessary to plan and schedule appropriate enforcement support for FY 2005/2007, NEIC would like to receive requests from the regions by August 1, 2004. It is important that NEIC receive all

regional submissions by August 1, 2004 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.

To initiate discussions necessary to plan and schedule appropriate enforcement support for FY 2004, NEIC would like to receive requests from the regions by August 1, 2003. It is important that NEIC receive all regional submissions by August 1, 2003 to allow for an examination of all projects in line with resources. These requests should be as specific as possible, and include information to help NEIC determine whether they can provide the requested support. As completely as possible, this information should include:

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

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

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

Gene Lubieniecki
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US EPA-NEIC
Denver Federal Center
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National Performance Measurement
and Analysis Staff
US EPA - OECA
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1200 Pennsylvania Ave., NW
Washington, DC 20460

NETI

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C. FTE Resource Charts

Attachment A contains the FTE resource charts similar to the charts completed in previous planning cycles. The charts are organized by goal, objective and sub-objective and then cross-walked to the media program elements. The importance of the FTE Resource Charts has been growing significantly because of increasing interest from the Office of Management and Budget, the Inspector General and Congress. It is imperative that these charts be completed and sent with the FY 2005 Workplan submittal package.

2004 Enacted - This column contains the same information submitted in your FY 2003 MOA. It should represent each region's budget allocation, derived from the Agency's FY 2004 Enacted Operating Plan.

2005 Proposed - This column is blank and the information is to be provided by the regions in the FY 2005 workplan. We recognize that FTE levels may change after the Agency receives the FY 2005 enacted budget after October 1, 2004. Therefore this number is a best guess estimate.

Objective/Sub-objective/ Program Component		EPA Enforcement and Compliance Assurance Resource Information																												TOTAL		TOTAL	
		Region ____																															
		CWA	CWA	CWA	CWA	SDWA	SDWA	SDWA	SDWA	Stationary	Stationary	Hazardous	Hazardous	Pesticides	Pesticides	Toxic	Toxic	EPCRA	EPCRA	Regional	Regional	Federal	Federal	Sector and	Sector and	Environ. Review	Environ. Review	Non-Enforcement	Non-Enforcement				
2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed	2004 Enacted	2005 Proposed				
Goal 4: Communities/Ecosystems		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Objective 2		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Community Health																																	
57 Environmental Justice		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
GOAL 5: COMPLIANCE		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Improve Compliance																																	
44 Civil Enforcement		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
48 Compliance Assistance and Centers		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
49 Compliance Incentives		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
50 Compliance Monitoring		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
52 Criminal Enforcement		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
85 International Capacity Building		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Improve Environmental Performance																																	
90 NEPA Implementation		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
ENABLING		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
F8 IT/Data Management		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
Other		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			