



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Core EPA Enforcement and Compliance Assurance Functions

FROM: Steven A. Herman
Assistant Administrator

TO: Regional Administrators, Regions I-X

Attached is a paper outlining those essential enforcement and compliance assurance functions that must be performed by EPA to assure the protection of public health and the environment, and to assure that polluters do not gain a competitive advantage over those regulated entities that comply with federal environmental requirements. Developed in cooperation with the Regions, this paper is intended to guide the Regions in their discussions with the States on the appropriate role to be performed by EPA, including discussions related to the development and implementation of Environmental Performance Agreements. We have also attempted to incorporate lessons learned from some of the Performance Partnership discussions which have already taken place.

The attached statement addresses EPA's role in setting national enforcement and compliance assistance priorities, monitoring compliance, conducting enforcement, offering incentives for self-disclosure and correction of environmental violations, delivering compliance assistance, and evaluating State programs in accordance with the principles of the National Performance Partnership System. While we recognize that the implementation of these functions will continue to be a challenge, they are fundamental to our continuing enforcement and compliance assurance program.

I want to thank all of those in the Regions and at Headquarters who have worked on developing this important statement and look forward to implementing it with you in the months ahead.

Attachment

cc: Deputy Regional Administrators, Regions I-X
Regional Counsel
Regional Enforcement Coordinators
OECA Office Directors

**CORE EPA ENFORCEMENT
AND COMPLIANCE ASSURANCE FUNCTIONS
February 21, 1996**

I. Introduction

- This paper is intended to guide EPA Regional offices in their discussions with States regarding EPA's essential responsibilities for ensuring compliance with environmental standards through the use of enforcement and compliance assistance tools.

- Specifically, this paper outlines EPA's core functions needed for the protection of public health and the environment and the assurance that those regulated entities who violate environmental requirements do not gain a competitive advantage over those who comply with environmental laws. These core EPA functions include setting national priorities; monitoring compliance on a national basis; assuring national consistency in the implementation and enforcement of federal environmental requirements; taking enforcement actions against corporate violators with significant noncompliance at facilities in several States, or where States do not address particular violations; offering incentives for violators to come into and remain in compliance; conducting compliance assistance for high-priority sectors and federally-implemented programs; and evaluating State performance.

II. Federal Role as Environmental Steward

- Ensure the enforceability of federal environmental regulations and provide fair notice about what regulated entities must do to comply with federal requirements.

- Ensure that national standards for the protection of human health and the environment are implemented, monitored and enforced consistently in all States.

- Establish national priorities for enforcement and compliance assistance based on risk and/or national, interstate and transboundary environmental and compliance problems.

- Evaluate the effectiveness of enforcement and compliance programs and policies on a national level in achieving compliance and environmental benefits.

- Build State capability in implementing federal environmental programs by providing clear statements of policy and guidance, and delivering technical assistance and training on new regulations and national priorities.

- Lead by example by assuring compliance and promoting pollution prevention throughout the federal sector.
- Empower the public through access to information relating to the environmental performance, including compliance status, of individual facilities and sectors.

III. Federal Role in Compliance Monitoring and Enforcement

Targeting and Compliance Monitoring

- Develop and enhance tools for States and EPA to use in identifying patterns of noncompliance and conducting risk-based targeting.
- Develop and maintain compliance monitoring systems and enforcement response policies to guide the national civil/criminal enforcement programs.

Conducting Federal Inspections and Enforcement

- Enforce in coordination with the State, as appropriate, to bring an immediate stop to illegal activities that pose actual or potential harm to public health or the environment.
- Enforce in partnership with the States or where States do not address violations:
 - against sources, including federal facilities, that pose the greatest risks to human health or the environment and/or have long-standing histories of noncompliance;
 - against companies and/or individuals who have engaged in criminal conduct;
 - to deter and prevent the creation of pollution havens and assure that those who comply with environmental requirements are not placed at a competitive disadvantage with those who violate environmental laws.
- Enforce against corporate sources with significant company-wide noncompliance in several States.
- Enforce against sources where releases to the environment threaten the health or environment of another State or country.
- Enforce to assure compliance with federal consent decrees, consent agreements, federal interagency agreements,

judgments and orders.

- Conduct multimedia inspections and enforcement at federal facilities to achieve and maintain compliance, and participate in other agencies' budget formulation.
- Enforce in non-delegated programs, partially-delegated programs, or non-delegable programs.

IV. Federal Role in Compliance Assistance and Providing Incentives

Compliance Assistance

- Develop compliance assistance materials and services tailored to promote compliance within high priority sectors, address compliance problems in federally-implemented programs, and publicize and explain new regulatory requirements.
 - In delegated programs, such materials and services should be delivered by States, Tribes or other appropriate governmental entities. For national programs that are not delegated to States or Tribes and for new regulations and policies, EPA will generally develop and deliver such compliance assistance.
- Promote environmental compliance and pollution prevention in the federal sector through technical and compliance assistance activities.

Incentives for Self-Disclosure and Correction

- Promote self-policing through consistent national policies that provide incentives for self-monitoring, disclosure and correction in exchange for increased flexibility and penalty reductions.
 - E.g., the Final Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; the Interim Policy on Compliance Incentives for Small Businesses; and the Policy on Flexible State Enforcement Responses to Small Community Violations.

Foster Innovation and the "Beyond Compliance" Ethic

- Work in partnership with the regulated community and the public on a national level to pilot innovative solutions to environmental problems (e.g., Environmental Leadership Program, Project XL, Common Sense Initiative) and inform the public on the effectiveness of such programs.

V. Performance Partnership Principles for Delegated and Authorized Programs

- Consistent with the principles stated above, negotiate and implement Environmental Performance Agreements that define State and Federal responsibilities and commitments in achieving environmental goals and compliance assurance and enforcement performance measures.
- Provide appropriate oversight where needed to improve performance and strengthen programs, and for States that do not fulfill commitments in State/EPA agreements (including the Environmental Performance Agreements).
 - E.g., where EPA has information that a State lacks inspection or enforcement capacity or otherwise does not fulfill commitments in State/EPA agreements; where States fail to provide accurate and verifiable data to EPA on compliance status of facilities, effectiveness of compliance assistance activities, and the environmental benefits achieved through compliance assistance and enforcement efforts.
- Provide less oversight for delegated State programs where States are actually meeting the environmental and program performance measures of the National Environmental Performance Partnerships System. For example, under the National Performance Partnership System, we will be moving towards end-of-year reviews with selective use of real-time reviews based on State performance. This does not, of course, preclude EPA from taking individual actions consistent with the principles outlined above.