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MEMORANDUM

SUBJECT: Final FY 96/97 OECA Memorandum of Agreement Guidance

FROM: Steven A. Herman  
Assistant Administrator

TO: Regional Administrators

This memorandum provides you with the Office of Enforcement and Compliance Assurance (OECA) final FY 96/97 Memorandum of Agreement (MOA) Guidance. This MOA guidance reflects discussions we have had with you and your staffs about the strategic direction of the enforcement and compliance assurance program over the next two years.

In this final document, we have addressed comments and concerns you raised in response to the draft guidance we distributed March 30, 1995. Significant changes from the draft guidance include:

1. a detailed and streamlined package of measures, known as Reporting for Enforcement and Compliance Assurance Priorities (RECAP), which replaces traditional STARS reporting measures and reduces the number of measures and data to be collected;
2. more detailed pesticides and toxics enforcement program grant guidance;
3. a revised and more complete discussion of compliance assistance measures; and
4. removal of RCRA Corrective Action projections, which will no longer be included in the MOA.

We are expecting the submittal of your Regional MOA proposal between **July 14, 1995, and August 18, 1995**. This submittal interval will provide more time for you to develop and select Regional community-based, media, and sector-specific priority strategies. All facility-specific information provided as part of your MOA should be included as a separate attachment, designated "FOIA exempt." FOIA exempt materials include

information directly linked with enforcement proceedings, investigations, or prosecutions. Please see specific guidance in the Agency's FOIA manual and at 5 U.S.C. 552(b)(7)(A) and (E).

Additionally, we are developing a Response to Comments document which identifies and addresses issues or questions raised during review of the draft guidance document. This document will be completed shortly and distributed under separate cover.

When submitting your MOA, please provide two copies to Jack Neylan, Chief, Planning Branch, Enforcement Planning, Targeting and Data Division, Office of Compliance, mailcode 2222-A. We expect all negotiations to be concluded and all MOAs to be in place by October 15, 1995.

I appreciate your continued commitment to making the enforcement and compliance program stronger and more effective, as we strive to achieve our strategic goals together. Over the course of the next two years, in particular at the midway point, we will continue to consult with you as Agency directions change, specifically in the areas of oversight and grant programs. Please direct any questions or concerns on the guidance to Elaine Stanley at (202) 564-2280, mailcode 2221-A.

#### Attachments

cc: Assistant Administrators  
Deputy Regional Administrators  
OECA Office Directors  
Regional Counsels  
Regional MOA Coordinators  
OECA MOA Workgroup  
Headquarters Media Program Contacts

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*Attachment II: Rationale for Selecting Priority Sectors*

*Attachment III: October 31, 1994 Memorandum entitled:  
OECA's Operating Principles for the  
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*Attachment IV: OECA Core Program Activities*

*Attachment V: RECAP: Reporting Enforcement and Compliance  
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## FY 96/97 OECA MEMORANDUM OF AGREEMENT GUIDANCE

### I. INTRODUCTION

The purpose of the Office of Enforcement and Compliance Assurance (OECA) Memorandum of Agreement (MOA) is to implement an effective enforcement and compliance assurance program that will contribute to EPA's national goals. This MOA represents a significant change in strategic direction, shifting from our traditional exclusive focus on media-specific formal enforcement activities, to a balanced program of compliance assistance and enforcement which will address community-based, industry sector-based, and media-specific priorities. During FY 96 and FY 97, we continue to stress the importance of environmental justice, pollution prevention, and multi-media approaches as we implement our programs. This MOA guidance initiates an evolving two-year process designed to address significant environmental and noncompliance problems, use a variety of enforcement and compliance tools to address those problems, and measure the impact of our efforts. This document also serves as grant guidance for enforcement and compliance assurance efforts.

### II. GOAL: Maximize Compliance and Ensure Environmental Accountability

The goal of EPA's enforcement and compliance program is to promote responsible environmental behavior by ensuring compliance with legal requirements and encouraging practices that go beyond compliance. Our program will foster accountability of regulated entities so they can meet the full range of environmental requirements and obligations. We will accomplish this by using a variety of enforcement and compliance assurance tools (i.e., compliance assistance, compliance monitoring, incentive and recognition programs, and civil and criminal enforcement). These tools will be used individually or in combination to address significant environmental or noncompliance problems of industry sectors, communities and ecosystems, or pollutant media such as air, water, or land.

### III. OPERATING PRINCIPLES

#### Reduce Risks to Environment and Human Health:

To the maximum extent possible, resources of the enforcement and compliance assurance program should be targeted to reduce risks to human health or the environment.

#### Use Multi-Media Strategies:

Enforcement and compliance assurance strategies and initiatives should be organized around industry sectors, communities and ecosystems, and other entities that reflect the multi-media nature of environmental problems. Wherever appropriate, Regions and States<sup>1</sup> should employ a multi-media perspective in targeting, developing and delivering compliance assistance, conducting inspections and taking enforcement actions, including participation in addressing national violators.

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<sup>1</sup> Reference to State(s) in this document also includes Tribal and Local partners.

Use the Full Range of Enforcement and Compliance Assurance Tools:

As we address significant environmental or noncompliance problems, we should consider the full range of tools available and select the tool or combination of tools most appropriate for the problem. In formulating the appropriate strategies to address these problems, such factors as the nature and extent of risk to human health and the environment, the compliance profile of a particular violator or sector, and the level of community interest should be examined. For example, when the violations present a significant risk to human health or the environment and the violator has a history of noncompliance, enforcement actions would generally be the appropriate approach. On the other hand, where regulations are new or apply to large numbers of small businesses, compliance assistance may be the most appropriate approach. As these strategies are developed, it is of particular importance that they incorporate pollution prevention and environmental justice considerations.

Build Partnerships and Provide Public Access:

An effective environmental enforcement and compliance assurance program depends upon constructive partnerships with State, Tribal and local governments and increased public involvement. The enforcement and compliance assurance program recognizes and supports the oversight reform efforts of EPA and the States and will be heavily involved in implementing these changes as they become more clearly defined. We are working now to increase the involvement of our partners in setting priorities and developing strategies to address environmental and noncompliance problems. The partnership between EPA Headquarters, EPA Regions, States, and local governments must include consensus on a clear assignment of roles and responsibilities. These roles should utilize the inherent strengths that each party brings to the relationship. To be successful, compliance and enforcement strategies should recognize and build from available expertise and assistance capacity at all levels/sources. We will also enlist the public in our efforts to increase compliance by ensuring the public has access to data about environmental conditions, and improved access to data regarding noncompliance patterns of facilities, companies, and industry sectors. By providing outreach materials, we will succeed in educating the public and regulated community about the requirements, as well as environmental and public health concerns of local interest.

Measure Impact:

Our enforcement and compliance assurance program must measure the results and impact of activities, not just count the activities themselves. During FY 96 and FY 97 major emphasis will be given to improving our capacity to measure changes in compliance rates and environmental improvements that result from our enforcement and compliance assistance initiatives and activities. This shift in our approach to measures is vital to the future of our enforcement program and it will require a commitment from all our partners to make it work.

Maintain a Robust Enforcement and Compliance Assurance Program:

While the enforcement and compliance assurance program addresses the priorities described in this guidance, we will need to maintain a strong core program of cross-cutting functions such as compliance monitoring and inspections, complete and accurate data systems, case development and management, State/Tribal capacity building, enforcement actions and compliance assistance. Headquarters and Regional managers and staff will need to work cooperatively to balance and blend national priorities, core program activities, and Regional and State needs. Striking this balance will require flexibility with regard to output levels (refer to section IX for a more complete discussion of output levels), explicit choices about investments and disinvestments clearly identified in each regional MOA, and a willingness to adapt to new directions. These new directions and approaches are complementary to our traditional enforcement program. While we support resource shifts within and between enforcement and compliance efforts, it is imperative that all enforcement and compliance resources remain committed to supporting these activities only, and not be shifted to activities that are not part of the enforcement and compliance assurance program.

#### **IV. PRIORITIES**

The FY 96/97 compliance and enforcement priorities are organized around three themes: community-based protection; industry sectors; and media-specific issues. We recognize that these three themes are all essential to an effective and successful enforcement and compliance program. We strongly encourage the Regions to incorporate all three themes into their compliance and enforcement MOAs. Regions should work with their States in developing a Regional MOA document that identifies and supports the following priorities, as well as describes unique activities they are undertaking.

##### **1. Community-Based Protection**

A major component of the FY 96/97 MOA Guidance and the Regional FY 96/97 MOA submissions will be development of multi-media enforcement and compliance strategies for those communities, ecosystems, and places chosen as priorities. The Agency has committed to direct at least 20% of Regional resources toward community-based efforts in FY 96. Nomination of high priority communities or places would be done primarily by Regions working with States, or, in cases where a place-based priority crosses Regional lines or national boundaries, after consultation with OECA and the involved Regions.

Community-based priorities will focus on environmental or noncompliance problems associated with a particular community or place, including ecosystems, (e.g. watersheds, airsheds) or other natural resource areas of local or Regional concern. Community-based approaches also provide opportunities to address environmental justice concerns. Definable geographic areas have proven to be effective units of work which facilitate collaborative planning and return a sense of involvement with environmental decision making to the people living in these communities.

Each Regional MOA should provide a list of community or placed-based initiatives that will be their focus for enforcement and compliance assurance work. We understand that the Region/States will use a variety of factors in selecting communities and the enforcement/compliance activities may not be pertinent in all areas, or at all phases of these projects. It is anticipated that the Regions will consider the range of appropriate compliance and enforcement activities for the places identified in



the Community Based Environmental Protection (CBEP) planning done by the Regions in response to the Deputy Administrator's request for CBEP action plans. For each initiative, please describe the environmental and/or noncompliance problems which need to be addressed, the role of enforcement and compliance assurance tools in addressing these problems, and the outcomes or results which will be measured to assess the effectiveness of the initiative.

Refer to Attachment I for a list of Headquarters support activities to assist in the development of community-based priorities.

## 2. Industry Sector Priorities

A second element of the FY 96/97 MOA Guidance and the Regional MOA submissions is the development of compliance and enforcement strategies for specific industry sectors that warrant priority attention. In an effort to balance the need for a comprehensive national focus on key industry sectors with the need for flexibility to accommodate Regional and State specific issues and concerns, we have developed a tiered approach to establishing sector priorities. In general, the selection of which specific sectors to address will primarily be a Regional/State choice to enable each to address their specific situation(s). To assure that attention is focused on resolution of compliance issues in sectors found to be nationally significant, however, we have identified three sectors as "national priority sectors" and ten others as "significant sectors."<sup>2</sup> These specific sectors were selected as priorities based on factors such as high noncompliance rates; high volume TRI releases; significant presence and impact in most Regions; and feedback provided through Headquarters/Regional in-house expertise.

Designation as an OECA priority sector means that these sectors will receive special emphasis, such as in-depth analysis of sector-specific compliance problems and focused application of the appropriate compliance/enforcement tools which would be most effective in increasing sector compliance. Such attention can result in the establishment of sector-specific compliance assistance centers, technical assistance and focused outreach and follow-up efforts, as well as the balanced use of our traditional enforcement tools where appropriate. Our goal is the development of innovative approaches to achieve increased compliance within these sectors, and we are open to new ideas and approaches while assuring that public health and the environment are ultimately protected.

As explained later in this document, each Region must develop compliance/enforcement strategies for the three national priority sectors - or explain why it is inappropriate to consider a particular sector as a priority for your Region. In addition, each Region is expected to choose two of the ten "significant sectors" to focus compliance/enforcement strategies upon as well.

### a. National Priority Sectors

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<sup>2</sup> The Office of Compliance is developing and expects to finalize Sector Notebooks for many of these identified sectors during the summer of 1995. Sector Notebooks contain valuable background information on specific industries including, for example, ongoing compliance initiatives, compliance and enforcement profiles, and basic process knowledge.

Our analysis has identified the following sectors as national priority sectors which should be addressed by the Regions:

- petroleum refining
- dry cleaners
- primary nonferrous metals

Not only do these three sectors have noncompliance and high TRI releases, but they have a significant trans-Regional impact. (Attachment II provides an explanation of the factors used to select these sectors.) If a Region feels that a national priority sector does not merit high priority in their Region, they should provide an explanation of their rationale in their MOA, and provide a strategy for another sector they propose to substitute. This would then be discussed during MOA negotiations.

#### b. Significant Sectors

In addition to the national priority sectors outlined above, ten additional sectors have been selected for increased attention during FY 96/97. While these sectors may not present as universal a national impact, in many Regions and States they are very important and demand attention. We recommend that the Regions develop strategies utilizing both enforcement and compliance tools in at least two of these sectors. Regions should identify in their MOA which of the following sectors they are targeting (these are not listed in any priority order):

- pulp mills
- agricultural practices
- industrial organic chemicals
- mining
- iron and basic steel products
- plastic materials and synthetics
- printers
- auto service\repair shops
- municipalities for combined sewer overflows/sanitary sewer overflows
- coal-fired power plants

#### c. Other Sectors

Regions and States may have information about other sectors which are unique or problematic to their Region and/or State(s). If any of these other sectors will receive attention from the Regional/State enforcement and compliance assurance program during FY 96/97, the MOA submissions should explain why they were selected and what enforcement or compliance activities are underway or planned.

#### Coordination with Common Sense Initiative

Three Common Sense Initiative (CSI) sectors are included among the thirteen designated priority sectors - printing, iron and steel, and petroleum refining. Their selection was based solely on

the factors outlined above; their participation as CSI Sectors had no bearing on their selection as OECA MOA priorities. OECA's "Operating Principles for the Common Sense Initiative", (dated October 31, 1994, included as Attachment III) clearly states that our policy is that "no one will be singled out for enforcement as a result of participation in the CSI, and no one will be immunized from enforcement as a result of participation in CSI."

To emphasize our support for the integrity of the CSI process, OECA has incorporated within its CSI Operating Principles a "No Surprises Policy" to ensure that advance notice is provided to facilities that are clearly affiliated with companies participating in the CSI Council, subcommittees or workgroups before a civil or administrative action to assess penalties is filed. We strongly reaffirm our adherence to these Operating Principles and will be working with each Region to ensure that the principles are followed in the field.

OECA is firmly committed to work very closely with the CSI Sector Subcommittees to address sector wide compliance concerns. EPA CSI Sector Leads are participating on OECA's MOA Review Teams to review sector-specific strategies proposed by the Regions in their draft MOAs. This input promotes greater understanding in the CSI community of compliance/ enforcement activities and initiatives - from both a Regional and national perspective. In addition, OECA and the Regions will work closely with specific CSI sector subcommittees that develop alternative approaches and/or innovative techniques to achieve compliance within these sectors.

#### Development of Sector Strategies

Regions and States should utilize a broad range of compliance and enforcement tools when developing multi-year strategies to address specific sectors. Some sectors may be particularly well-suited to the initiation of compliance assistance activities, while others may require use of more traditional enforcement tools. As each Region develops its specific sector strategies, however, we strongly encourage you to think very broadly about the nature of the compliance problems facing your selected industries and fashion innovative solutions from the full range of compliance/enforcement tools available to you. We also encourage you to consider outyear impacts and actions in selecting the mix of compliance and enforcement tools.

For each of the five industry sector initiatives called for in this guidance (i.e. three national priority sectors and at least two additional priority sectors chosen by each Region) a strategy will need to be described in your MOA submissions. As a first step in developing those strategies, data from industry sector profile notebooks provided by Headquarters, as well as data from Regional or other sources should be reviewed. This review should consider factors such as: the sector's current or potential impact on human health and the environment; previous compliance history of the sector within your Region; geographic concentration and demographic factors such as size of businesses and facilities; environmental justice impacts; and sector's potential for achieving compliance, embracing pollution prevention and moving beyond compliance as well as CSI participation and planned projects.

The strategy for each industry sector should describe the environmental and/or noncompliance problems which need to be addressed, the compliance assurance and enforcement

tools (e.g., compliance assistance, compliance monitoring, incentive and recognition programs, civil and criminal enforcement) that you anticipate will be applied to the sector, and the outcomes or results which will be measured to assess the effectiveness of the strategy.

### **3. Media-Specific Priorities**

The third source of potential enforcement and compliance assurance priorities is pollutant/media-specific environmental and noncompliance problems. Selection of media specific priorities for the enforcement and compliance assurance program has been done collaboratively by OECA, the

Protect Human Health:

--Conduct compliance and enforcement activities to help ensure a safe occupational environment for all workers who become exposed to hazardous chemicals, including compliance with the FIFRA Worker Protection Standard (WPS) and TSCA section 5, particularly New Chemical Exposure Limits (NCELS) orders. Through enforcement, protect public health and the environment from potential high risk situations involving misuse and ineffective or unregistered pesticides (e.g., products with child resistant packaging (CRP) problems, hospital disinfectants, food safety issues, etc.).

-- Reduce public exposure to lead-based paint and asbestos hazards in indoor environments through enforcement of AHERA, as appropriate per Region, based on identified non-compliance and risk, the revised asbestos Model Accreditation Plan (e.g., audits of training courses and case issuance), the current and revised asbestos Worker Protection Rule (expected to become final in FY 97), and continued planning for enforcement and compliance assistance for the lead-based paint hazard abatement program.

EPCRA §§ 302-312 & EPCRA § 313

-- Ensure that communities have accurate and timely emergency preparation and notification information in addition to chemical storage and release information through EPCRA enforcement initiatives; i.e., a combined EPCRA/CERCLA 103 initiative, targeting an area with high non-compliance, and an EPCRA 313 TRI chemical expansion compliance assistance and enforcement initiative.

RCRA

New Regulations:

-- Develop Regional expertise on new RCRA regulations (e.g., Universal Treatment Standards, Subpart CC, other HSWA requirements) in order to implement these requirements in a manner that focuses on the greatest risks to human health and the environment and to provide support and education to the States until they become authorized to implement the regulations.

Outreach and Assistance:

-- Employ mechanisms to provide information about the hazardous waste requirements which enhance compliance either directly or indirectly by participating in activities such as responding to requests for clarification on requirements by the regulated community, participating in seminars and workshops, or developing manuals for specific industries.

Generators:

-- Increase enforcement and compliance activities at facilities generating hazardous waste but that are not treating, storing, or disposing of waste on site. Because of potentially higher rates of noncompliance, generators may pose greater risks to human health and the environment. Additionally, the Agency can encourage pollution prevention by focusing on those companies that generate hazardous wastes.

## Air

### Air Toxics:

-- By 1996, target compliance assistance and enforcement activities to address extremely hazardous air pollutants to bring industry into compliance with regulations applicable to such critical industries as chemical manufacturers, steel industry (coke ovens), dry cleaners, and degreasing/halogenated solvent users, among others, as well as accidental releases of air toxics. State and local permitting authorities must be educated regarding the new requirements, Regions must work with affected sources to ensure understanding of such requirements, target for inspections, and take enforcement actions where necessary to deter noncompliance. Regions must coordinate internally and with HQ to implement the requirements of §112(r)(1) of the CAA.

### Operating Permits:

-- In FY 96, the Regions and HQ will have a short period to review, to the extent resources permit, draft Title V permits to ensure they are practically enforceable and include all applicable requirements relevant to the permitted source, and to review the source's compliance plan, if any. The Regions may also help train permitting staff in writing permits that contain practical and enforceable terms and conditions. In addition, beginning in FY 96, and increasing in FY 97, Regions should begin targeting inspections and taking enforcement actions against Title V permitted sources, particularly in nonattainment areas.

### Implementing New Enforcement Tools:

-- The Clean Air Act Amendments authorize EPA to initiate, through rulemaking, a field citations program for minor violations. The final rule is expected to be published by June, 1995. By FY 96, most of the Regions will have been trained in the use of field citations and will implement this tool, particularly in nonattainment areas. The Regions will begin to use the Citizen Awards Program. They will also utilize other new tools as available, including compliance data from continuous emissions monitors, with an emphasis on sources located in nonattainment areas. The Regions will develop expertise necessary to oversee the implementation of federally-enforceable market-based incentive programs.

### Superfund<sup>3</sup>

### Worst Sites First:

--Regions should focus on the "worst sites first" and expand the use of removal authority to mitigate threats to people and the environment.

### Enforcement First/Cost Recovery:

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<sup>3</sup> Superfund targets and measures will be negotiated through the SCAP process. The Regions do not need to provide the SCAP negotiated information in the MOAs. Regions should discuss in their MOA any Superfund resources/activities which support sector-based, or community-based activities.

--In order to leverage the number of cleanups we can undertake or oversee we must maximize PRP participation. The key areas of emphasis are: early initiation of PRP searches and negotiations to support SACM and to maximize PRP response leads, particularly in addressing cost recovery actions that will expire under the Statute of Limitations in March 1997; using Alternative Dispute Resolution to resolve costs owed and compliance monitoring to ensure violations are documented.

Enforcement Fairness/Reduce Transaction Costs:

--EPA must assure fair treatment of all potentially Responsible Parties, especially small volume contributors and parties with a limited ability to pay, who will be targeted for early and prompt settlements. PRP searches to pursue parties identified by other PRPs will be emphasized, as will Alternative Dispute Resolution. Allocation of response cost will be emphasized through pilots and mixed funding will be used where possible. Steps will be taken to reduce private sector transaction costs associated with the cleanup of contaminated sites.

## **V. CRIMINAL ENFORCEMENT AND FEDERAL PROGRAMS**

In addition to the priorities, overarching Agency programs exist which impact all media areas, namely Criminal Enforcement Activities, Federal Facilities, and Federal Activities, (which includes international activities). Please integrate the program directions of these areas into all appropriate Regional activities.

### Criminal Enforcement

The Office of Criminal Enforcement has identified the following focus areas for emphasis in FY 96 and FY 97: a.) targeted investigation/enforcement of environmental violators located in the Mississippi River Basin; b.) continued implementation and emphasis on environmental justice activities and multi-media approaches to criminal enforcement; c.) continued implementation of the January 12, 1994, Investigative Discretion Guidance; and d.) continued targeting for investigation of persons who provide false data to EPA and State regulators. When developing sector or community-based strategies, consider specifically appropriate use of criminal resources in these focus areas.

### Federal Facilities Enforcement

Enforcement and compliance activities at Federal facilities have a connection with a number of the operating principles and priorities established for the FY 96/97 MOA process. For example, the Federal facilities enforcement program launched the multi-media enforcement and compliance initiative in FY 92. Due to its success, OECA will continue this initiative into FY 96 and FY 97 on a nationwide basis. We are requesting that each Region perform a minimum of two multi-media inspections at Federal facilities each year. This initiative is important because it utilizes multi-media strategies and allows EPA to leverage RCRA/FFCA authority.

The Federal facilities program emphasizes the use of compliance assistance in addition to enforcement actions. Providing guidance, outreach and training assists Federal agencies in

achieving and maintaining environmental compliance, including activities under Executive Order 12856 which emphasizes pollution prevention. Regions should increase emphasis on outreach and assistance to civilian Federal agencies.

Regions also should consider including selected Federal facilities as part of your strategies to address specific MOA priorities, including significant Federal facilities located in place-based priority areas or within other significant sectors. In addition, Federal facilities should be addressed under media priorities, as appropriate, especially EPCRA reporting (a new requirement in FY 95), RCRA generators and air toxics (a new requirement under CAA Title III).

#### Office of Federal Activities

The Environmental Review and Coordination (ERC) program will support achievement of several of the OECA's goals and ensure environmental accountability through the National Environmental Policy Act (NEPA) and international technical assistance agreements. The ERC program will emphasize partnerships with other Federal agencies to better integrate into their program EPA's pollution prevention and ecological risk assessment efforts; ERC will particularly emphasize ecosystem protection and the development of sound data and methodologies to assess environmental impact and ecological risks. The program will assure that EPA has a solid program of compliance with NEPA and other applicable statutes, and with environmental justice requirements. This effort will include the environmental assessment of: EPA-issued new source National Pollutant Discharge/ Elimination System (NPDES) permits in non-delegated States, off-shore oil and gas sources, EPA laboratories and facilities, and remaining projects under the construction grants program. The program will also manage the Agency's official filing activity for all Federal Environmental Impactments (EISs) in accordance with a Memorandum of Understanding (MOU) with the Council on Environmental Quality (CEQ).

In the international arena, the ERC program will participate in the development of international environmental assessment (EA) procedures and project reviews, with specific emphasis on the Mexican Border, and will provide training on EA principles and processes.

To meet these commitments in FY96/FY97, OECA and the Regions should consider enforcement and compliance efforts in the appropriate geographic regions and industry sectors including: a.) the U.S./Mexico border area, b.) implementation of the U.S./Canada Great Lakes Water Quality Agreement, and c.) efforts to address sensitive ecosystems or populations which transcend national boundaries. Priorities will also include other sectors identified for international cooperation by the North American Commission for Environmental Cooperation or by agreement with Mexico or Canada.

OECA and the Regions will also focus on efforts to enforce U.S. requirements adopted under the following multilateral environmental agreements: a.) the Montreal Protocol on Substances that Deplete the Ozone Layer; and b.) when adopted, the Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal.



## **VI. CORE PROGRAM**

A core compliance and enforcement program supports all our work and is critical to our continued success. This core program, described in Attachment IV, needs to be maintained for the enforcement and compliance assurance program to address significant environmental and noncompliance problems and apply the appropriate tools to these problems. In each Region's MOA submission, we would like an explicit statement which provides a commitment to maintaining the core program. If a Region cannot make this commitment, an explanation should be provided in the MOA submission.

## **VII. REGIONAL SPECIFIC PROJECTS AND HIGHLIGHTS**

The priorities and infrastructure discussions above present the national perspective and approach for the compliance and enforcement program. We believe this direction is reflective of the Agency's direction and mission. We also recognize that the national perspective alone does not represent the entire scope of enforcement and compliance efforts. Regions should address unique or specific projects which they are involved with, along with the rationale and the anticipated results. This discussion should complete the framework of the Regional compliance and enforcement program. Where Regions are exploring innovative approaches, piloting projects or processes, or undertaking analyses for targeting and risk-based decision making, we would like to share this experience and findings with the other Regions.

## **VIII. MEASURING RESULTS**

Attachment V presents the FY 1996/1997 reporting measures for Enforcement and Compliance Assurance. The measures track with the recommendations made by the Office of Enforcement and Compliance Assurance (OECA) Measures of Success Workgroup (the Final Report of the Workgroup was transmitted in a January 24, 1995, memorandum from Elaine Stanley), and they establish a foundation for more effective measurement of environmental and programmatic results of the Agency's redesigned compliance and enforcement program. The new set of measures has been named "Reporting for Enforcement and Compliance Assurance Priorities (RECAP)."

The Enforcement Planning, Targeting, and Data Division in the Office of Compliance committed to review the former STARS measures that conveyed to OECA from the former Office of Enforcement and the media program offices with an eye toward dropping measures determined no longer to be needed. The attached RECAP measures reflect the results of that review. The only measures which will require upfront numerical commitments/projections will be those for media-specific inspections and drinking water SNC. Refer to Attachment VI for these charts.

The former STARS measures which conveyed to OECA have been reduced by 44%, and the associated data points have been reduced by 27% (these are contained in Sections III, IV, and V). Overall, the total number of measures in RECAP (the former STARS measures plus the new measures recommended by the Workgroup) reduce by 30% the total number of measures that conveyed to OECA, and the number of RECAP data points reported reduce by 12% the number that conveyed to OECA.

In addition to the streamlined measures, RECAP measures include:

1. Re-engineering of existing reporting on noncompliance rates to create multimedia profiles for sectors, community-based activities, pollutant-specific activities, and corporate perspectives.

## IX. OUTPUT LEVELS

EPA's enforcement and compliance assurance program has historically measured its yearly successes by counting various activities, e.g., actions filed, cases referred, penalties assessed. Headquarters has traditionally directed the Regions to meet or exceed the previous year's levels of these activities. This approach has serious limitations when used as the primary or exclusive indicator of success: it says little about the impact, effectiveness, and environmental results achieved through our activities; it does not take into account other enforcement and compliance assurance tools that can contribute to increased compliance; and it can lead to taking low priority enforcement actions in order to meet previous output levels.

Our effort to redefine how success is evaluated is timely as a result of several factors: first, our intention to use a wider range of enforcement and compliance tools requires a more sophisticated set of measures; second, the likelihood of resource reductions makes meeting previous levels problematic; and third, our work on developing measures based on results and outcomes (described in the previous section) has progressed to the point that new measures will be available.

Accordingly, we are providing the following guidance as we move toward more sophisticated measures:

--Although we will continue to collect and publicly report information about case referrals, actions filed, etc., we will no longer direct Regions to necessarily produce enforcement activities at previous levels.

--Although case measures will continue to be used as one indication of program performance, we will no longer use them as the primary measure of effectiveness in evaluating the performance of Regional enforcement programs. We will move as expeditiously as possible to emphasize outcomes and result-based measures.

--We need the full cooperation of the Regions in the development and implementation of the case completion data sheet, the enforcement activity index, and compliance assistance measures.

--In developing strategies to address each of the community-based and sector-based priorities in your MOA, Regions should propose outcome-based measures. In negotiating and finalizing MOAs, Headquarters will align these measures so they can be aggregated at the national level.

## X. GRANT GUIDANCE

Regions should use the priorities and activities identified in this MOA guidance as they negotiate all State grant work programs, as delineated below. Since OECA has direct responsibility for the pesticides, toxic and lead enforcement grants but is not directly responsible for administering other media grant programs, this approach has also been coordinated with the Headquarters media program offices to ensure that our priorities are in concert with their program priorities. Regions

should negotiate the enforcement and compliance components of grants in line with this OECA MOA Guidance.

Attachment VIII of this MOA guidance contains information to assist Regions as they negotiate State pesticides and toxics enforcement grant work programs. Specifically, Attachment VIII provides a detailed discussion of key activities which we feel the States need to commit to in order to undertake implementation of priorities identified in the toxic and pesticide areas.

Regions should work with their States to develop pesticide and toxic cooperative agreements that reflect the national priorities contained within this MOA guidance, as appropriate for each State, together with Regional, State, and local priorities. Refer to Section IV.3. for the list of national priorities identified for the pesticides and toxics programs. Also consider the community-based and sector priorities identified in Sections IV.1. and IV.2. when negotiating these cooperative agreements.

## XI. RESOURCE INFORMATION

We are not at this time requesting any additional resource information beyond what was provided in the FY 95 MOA submissions. In light of the Workforce Survey recently completed by Regional Offices and Headquarters Program Offices, and given that ongoing or planned Regional reorganizations will make resource estimates problematic, we will not request any resource information as part of your initial FY96/97 MOA submission. If necessary, at the mid-point of this two-year MOA and after Regional reorganizations are completed, we may ask that the resource information provided in your FY 95 MOA be updated.

## XII. PROCESS FOR DEVELOPING AND NEGOTIATING FY 96/97 MOAS:

### A. Format

To assist in the development of the FY 96/97 MOAs, Attachment IX provides a format for MOA development. Headquarters will also provide the Regions with this file electronically through the POSTMAN system. We hope that all Regions use the standard form. By providing the file, Regions may more easily make adjustments where necessary.

Regions should follow the following outline:

1. **Introduction:** 3-5 page summary of Region's strategic directions and program priorities for FY 96/97. Regions should discuss their overall approach, priority areas, and identify any barriers or impediments to successfully implementing their approach, including the need to build capacity.

2. **Priorities:** address each identified priority in the order it appears in the MOA guidance by developing a strategy with the following elements:

Priority: identify from guidance;

Statement of Problem: describe the environmental, human health or noncompliance problem(s) being addressed;

Activities/Tools to Address Problem: describe the enforcement and/or compliance assurance activities or tools which will be used to address the problem;

EJ Component: identify if this activity has any environmental justice aspects;

P2 Component: identify if this activity has any pollution prevention aspects;

Measuring Results: identify which measures (results, outcome-based measures, and/or traditional activity counts) you will use to determine success in meeting/achieving the activity;

Resource Tradeoffs: in support of each priority activity identify any necessary resource tradeoffs the Region is proposing in order to fulfill the priority activity (for example, FTE shifts both between or within enforcement and compliance programs, or shifts away from core activities);

Regional support needs: identify what support from Headquarters is necessary to assist you in completing the activity. Please note that in FY 96 any support requests for NEIC assistance will be negotiated through the MOA. Regions should feel free to discuss their requests with NEIC before submitting their MOA to Headquarters.

**3. Criminal Enforcement and Federal Programs** Regions should include summaries of Regional activities which address the identified priority areas from the Criminal, Federal Activities, and Federal Facilities programs.

**4. Core Program**: Regions should address their support of the core program, highlighting any trade-offs they are proposing and supplying a rationale for the trade-off, if this is not already clearly done under the priority discussion.

**5. Regional Initiatives**: Regions should provide information on special or unique projects which they are involved with, such as enforcement or compliance initiatives not discussed elsewhere, pilot studies, special EJ initiatives, and P2 projects that are not adequately covered under the national priorities discussion. Headquarters will analyze and share information between Regions on special projects or innovative approaches.

**6. Measuring Results**: In this section Regions should report on:

- a. Traditional enforcement measures under RECAP (Attachment V)
- b. Targeted measures which require upfront commitments, such as inspections or projections (charts provided in Attachment VI)
- c. Alternative measures of success, looking at both traditional enforcement as well as newer compliance assistance efforts, that you are using by either referencing the priorities discussion or identifying others that do not match a specific priority
- d. System enhancements, such as EJ flag, which they are supporting

B. Schedule for Developing and Negotiating FY 96/97 MOAs:

- In March publish draft MOA guidance
- In June publish final MOA guidance
- In July, Headquarters will conduct a series of conference calls with each Region (at both the DRA level and staff level) to discuss status, problems, and sector selection.
- Draft Regional MOAs are due to Headquarters between July 14, 1995 and August 18, 1995, with a first in/first reviewed approach.
- Headquarters will review and negotiate MOAs no later than mid-October, 1995.
- We will consult with the Regions in January, 1996 about whether changes or revisions should be made in priorities or guidance for FY 97, the second year of the MOA.

C. Reporting Schedule for FY 96 and FY 97:

- Mid Year reports due by May 1, 1996 and 1997. This report and subsequent conversations can also serve as the basis for making adjustments agreed to by both Headquarters and the Regions to address emerging needs, new data, amendment of statutory authorities, etc.
- In August, 1996 Regions will be requested to submit an MOA update which includes:
  - FY 97 commitment information;
  - changes or adjustments in Regional activities;
  - if necessary, resource information about FTEs and grant dollars.
- End of Year Report due November 15, 1996 and 1997.

D. Review and Negotiation of MOA

- We will discuss with each Region their preferred approach to discussing MOA issues/areas needing clarification. This could be one conference call per Region to discuss all areas or one per media (as needed). Before these calls we will fax to the Regional MOA contact the areas to be discussed.

- Superfund priorities and Headquarters support are defined through the OERR/OSRE joint strategic planning process. Superfund targets and measures will be negotiated through the SCAP process. The Regions do not need to provide the SCAP negotiated information in the MOAs. OSRE will be responsible for including it in the MOAs. Regions should, however, discuss in their MOA Superfund activities/resources which support multi-media, sector based or community based activities. The Regions should identify any Superfund priorities that are impacted by these areas and discuss trade-offs within the SCAP negotiations.
- RCRA Corrective Action (CA) priorities and Headquarters support are defined through the OSWER RCRA Implementation Plan and Beginning of Year Plans (RIP/BYP). RCRA CA measures will be negotiated through the RIP/BYP process. The Regions do not need to provide the RIP/BYP information in the MOAs. Nevertheless, Regions should discuss in their MOA any RCRA CA activities/resources which support multi-media, sector based or community based activities and any trade-offs this involves.
- Once staff level discussions and clarifications are complete, senior management discussions will take place between the DAAs and the DRAs. These calls will focus on: discussing the Region's enforcement and compliance program from a more strategic perspective, discussing national goals and directions for the program, and leading negotiations on remaining issues.

#### E. Link to Regional Evaluations

- Increasingly, as the MOA process matures, the MOA will establish much of the baseline against which the Regions' enforcement and compliance performance is measured during the Regional evaluations.
- Prior to each Regional evaluation, the Headquarters participants will familiarize themselves with the content of the MOA and will focus their review of the Region's performance pursuant to the MOA as appropriate.
- As part of the MOA negotiation process, HQ will review the most recent final evaluation report for each Region and will incorporate, as appropriate, the findings, conclusions, proposals, and commitments into the MOA negotiations and the MOA itself.
- Where either a Regional evaluation or an end of the year MOA report coincide within a month or two, HQ will take the information provided in the MOA report or questionnaire and cross walk with information requested by the Regional evaluation questionnaire, identify gaps, and tailor our request for additional information accordingly; every effort will be made to avoid covering the same material twice.
- HQ will provide feedback during the Regional evaluation on the status of HQ support requests expressed in the MOA.





## Headquarters Support Activities

### HQ Support for Community-based Protection:

- During FY 95, we are coordinating with the Regions on ecosystem projects within the Mississippi River Basin. Information and processes developed during these activities will be available for projects within this area and for use on other projects. [Lead: OC/AgED]
- During FY 96 and 97, we expect to have additional GIS and targeting support available for ecosystem and place-based approaches. [Lead: OC/AgED]
- FFEO is available to provide assistance in targeting Federal facilities within geographic areas designated as priority by the Regions/States (including enhanced use of FFTS), and is also available for other related issues (technical assistance, environmental justice, etc.). [Lead: FFEO]

### HQ General Sector Support:

- Develop a multi-media inspection and compliance tool which will be available for use by the Regions and the States when conducting inspections at particular chemical facilities. This guidance will be used as a basis to develop future industry specific compliance guidance documents. [Lead: OC/CCSMD]
- Develop an electronic directory of chemical manufacturing facilities that are categorized by the 2800 SIC code which will provide the Regions and States with a single, definitive directory of manufacturers of products in the 2800 SIC code category. [Lead: OC/CCSMD]
- Develop a readable, "Plain English Version of the Environmental Requirements for Perchloroethylene (Perc) Dry Cleaners" covering requirements under the CAA, RCRA and CWA. The document will be translated into Korean since a large percentage of the dry cleaning sector is owned by Koreans. Both documents will be field tested at dry cleaning facilities. (Lead: OC/CCSMD)
- Compile a multi-media compendium of existing educational environmental materials and outreach activities for the perc dry cleaning industry. (Lead: OC/CCSMD)
- Compile a reliable Perc Dry Cleaners Inventory identifying the regulated perc dry cleaning community and the compliance status, if available, of these facilities. At this time, there is no reliable, accurate list of perc dry cleaners since the cleaners are often small businesses not always captured under Agency reporting requirements. (Lead: OC/CCSMD)
- Develop an inspection manual that assists environmental personnel at State, local, and EPA Regional offices in conducting multi-media inspections or audits at perc dry cleaning facilities. (Lead: OC\CCSMD)

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- Develop and pilot, in the State of Washington, a multi-media compliance/pollution prevention inspection checklist and guidance for the printing industry. The checklist will be accompanied by a list of pollution prevention reference materials for printers. This project is also part of the Environmental Technology Initiative. (Lead: OC\CCSMD)
  - Build stakeholder consensus through The Common Sense Initiative (CSI) Printing Sector. The CSI Printing Sector Team is trying to achieve consensus on recommendations for "cleaner, cheaper, and smarter" environmental policies for the printing sector. The team is focusing on areas of pollution prevention, regulations, permits, reporting, innovative technology and innovative compliance and enforcement. There are a wide range of stakeholder groups participating in this process. Many pilot projects will be conducted under this effort and results shared among the Regions. (Lead: OC/CCSMD)
  - Cooperative Agreement with Council of Great Lakes Governors, Environmental Defense Fund, University of Wisconsin Solid and Hazardous Waste Education Center, Illinois Department of Energy and Natural Resources Hazardous Research and Information Center, Printing Industries of America and National Roundtable on Pollution Prevention to develop a Virtual National Resource Center for Printers. (OC/CCSMD)
  - During FY 95 and FY 96 we plan to initiate the development of an Agricultural Compliance Assistance Center which will be a source of assistance and information on how the range of agricultural enterprises can comply with various environmental requirements and be good environmental citizens. The Guidance for FY 1996/FY 1997 Pesticide Enforcement Cooperative Agreement Work Plans contains more detailed information in the Compliance Assistance Centers, which is Attachment VIII of this document. [Lead: OC/AgED]
  - A summary listing of environmental laws which farming operations must consider will be developed. [Lead: OC/AgED]
  - Train-the-trainer Manual for Concentrated Animal Feedlot Operations (CAFOs), will be available in FY 96. [Lead: OC/AgED]
  - Develop guidance and protocol for Regions/ and local governments to assist in implementation of Consolidated Inspections over the next two years. [Lead: OC/METD]
  - Support national priority sectors by conducting a limited number of investigations, in consultation with the Regions, at selected (i.e. small to intermediate size) petroleum refineries and primary nonferrous metal facilities or other high priority Regional/Headquarters targets. [Lead: OC/METD]
  - Develop a technical document outlining environmental problems found during our investigations of pulp and paper mills. This document will provide information the Regions and States can use during their pulp and paper inspections. [Lead: OC/METD]

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- OC will be providing sector notebooks and publishing manufacturing industry data profiles for the petroleum refining and primary nonferrous metal industries, as well as for the pulp mill, mining, iron and steel, plastics, paints and allied products, drugs and pharmaceuticals, cyclic organics, and printing sectors. These notebooks will identify basic information about the sectors, such as: size and geographic distribution of the industry; emerging industry trends; affected industry processes; the associated pollutant releases; the full range of applicable environmental regulatory requirements; historical enforcement and compliance trends; and other general information as necessary to familiarize the Agency with the sector as a whole. These notebooks will be designed for use not only by Agency personnel, but for State and local organizations, citizen groups, and industry itself. [Lead: OC/METD and CCSMD]
  - Assist in refining facility indexing and risk models to enable accurate and complete identification of the affected source universe within given sectors. This information can then be used in developing relative risk profiles for whole sectors and facilities within them. This will enable better targeting of resources at the most environmentally significant sectors and sources of pollution. [Lead: OC/METD]
  - FFE0 is available to provide assistance in targeting Federal facilities within sectors designated as priority by the Regions/States, and is also available for other related issues (technical assistance, environmental justice, etc.), especially as they relate to multimedia inspections, enforcement, etc. Potential sectors include mining, auto service/repair shops and printers (military bases, federal printing centers, etc.). [Lead: FFE0]

#### Media-Specific Support:

##### HQ Support for Water:

- Work with the Office of Compliance, Office of Water, Regions, and States to develop an enforcement strategy to target implementation in priority watersheds. The strategy will include CWA and SDWA programs. [Lead: ORE/WED]
- Work with the Office of Water, Office of Science and Technology to identify fish advisories sites (i.e., "troubled waters") that can be tied to specific point source dischargers and indirect discharges in violation of NPDES permits and Federal pretreatment requirements to target enforcement activities. [Lead: ORE/WED]
- Work with Office of Water as they develop guidance and policies necessary to control non-traditional sources of water pollution, such as wet weather flows, in priority watersheds. [Lead: OW with assistance from ORE/WED]
- Provide litigation support (legal, technical, and contract assistance) for Regional enforcement actions in priority watersheds. [Lead: ORE/WED]
- Participate with the Office of Water in the development of guidance on identifying and targeting for closure of industrial Class V wells in high risk areas. [Lead: ORE/WED]

- Initiate enforcement actions to supplement Regional and State enforcement efforts upon request by Region/State. [Lead: ORE/WED]
- Development of an Electronic Data Interchange (EDI) capability for PCS in FY 96. This supports the water (media-specific) priority area and reduces the reporting/data entry burden on the Regions, States and facilities. [Lead: OC/EPTDD]
- Develop guidance as needed to implement the new NPDES SNC definition to facilitate accurate identification and reporting of SNC universe and work to communicate this definition to the regulated community. [Lead: ORE/WED]
- Develop and implement a pretreatment SNC definition for POTW failure to implement pretreatment requirements. [Lead: ORE/WED]
- Provide training on the revised CWA Penalty Policy. [Lead: ORE/WED]

#### **HQ Support for Safe-Drinking Water Act:**

- Participate in regulation development and develop enforcement policies to address the highest risks, e.g., disinfection by-products, enhanced Surface Water Treatment Rule, ground water disinfection rule, and the information collection rule. [Lead: ORE/WED]
- Facilitate enforcement of the lead rule and the surface water treatment rule by providing assistance on regulation interpretation and on enforcement actions, and designing initiatives to target PWSS with highest lead levels. [Lead: ORE/WED]
- Develop guidance and policy as necessary to integrate drinking water source protection into enforcement actions. [Lead: ORE/WED]
- Provide litigation support (legal, technical, and contract assistance) for Regional drinking water and UIC enforcement actions. [Lead: ORE/WED]
- Initiate enforcement actions to supplement Regional enforcement efforts. [Lead: ORE/WED]
- Participate in the development of a new drinking water information system to ensure it supports enforcement and the information is understandable to the public. [Lead: OW, with OC/EPTDD and ORE/WED]

#### **HQ Support for Wetlands Protection:**

- Finish development and support implementation through additional guidance and training for wetlands enforcement infrastructure, i.e., enforcement compendium, litigation report guidance, SNC definition, penalty policy, and enforcement management system. [Lead: ORE/WED]

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- Implement the recommendations of the Interagency Wetlands Enforcement Case Processing Workgroup, e.g., establish case delegation criteria and conduct periodic docket reviews. [Lead: ORE/WED]
  - Provide litigation support (legal, technical, and contract assistance) for Regional wetland enforcement actions. [Lead: ORE/WED]
  - Together with OC, target and initiate enforcement actions to supplement Regional and State enforcement in high priority wetlands and watersheds. [Lead: ORE/WED]

#### **HQ Support for Toxics and Pesticides:**

- Chair the WPS initiative workgroup and provide support to Regions and States on Worker Protection enforcement policy and case development. [Lead: ORE/TPED]
- Coordinate and support the Regions on, national enforcement initiatives to ensure compliance with FIFRA and TSCA. [Lead: ORE/TPED]
- Provide Case Development Assistance and Training for WPS. [Lead: ORE/TPED]
- Provide Case Development Assistance and Training for FIFRA in general. [Lead: ORE/TPED]
- Develop and distribute the FIFRA Case Proceedings Manual. [Lead: ORE/TPED]
- Provide Case Development Assistance and Training for TSCA. [Lead: ORE/TPED]
- Develop and distribute the TSCA Case Proceedings Manual. [Lead: ORE/TPED]
- Develop an Electronic Bulletin Board to track Enforcement Case Reviews. [Lead: ORE/TPED]
- Work with the Regions to develop targeting strategies, including those for 8(e) CAP non-participants, and provide the Regions with targeting information. [Lead: OC/EPTDD, with support from OC/CCSMD, ORE/TPED, OPPTS]

#### **HQ Support for Lead-based paint and Asbestos Hazards:**

- Continue to coordinate with OC, the Regions, and States (through FOSTTA) in national planning for Federal and State enforcement issues associated with the new, proposed lead in paint requirements, including development of a final Federal enforcement program for lead, a draft Federal enforcement response policy, and draft Federal enforcement implementation plan and guidance. [Lead: ORE/TPED]
- Disseminate the Final ERP for the ASHARA Model Accreditation Program. [Lead: ORE/TPED]

#### **HQ Support for EPCRA:**

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- Revise the EPCRA Enforcement Response Policy in FY 96. [Lead: ORE/TPED]
  - Provide case development assistance for EPCRA. [Lead: ORE/TPED]
  - Coordinate and support the Regions on national enforcement initiatives. [Lead: ORE/TPED]
  - Provide implementation/new guidance for collection and analysis of EPCRA reporting requirements under EO 12856 [Lead: FFE0].

#### HQ Support for RCRA:

- Develop Regional expertise on new RCRA regulations (i.e., Subpart CC, Universal Treatment Standards, other HSWA requirements) in order to implement these requirements in a manner that focuses on the greatest risks to human health and the environment and to provide support and education to the States until they become authorized to implement the regulations. [Lead: ORE/RED]
- Develop an enforcement strategy for the regulation on air emissions from tanks, containers and surface impoundments, Subpart CC. [Lead: ORE/RED]
- Conduct a RCRA Enforcement Practitioners Course for Regional and State legal and technical personnel. [Lead: ORE/RED]
- Provide training for inspectors through the RCRA Inspector Institute as requested by the Regions/States. [Lead: ORE/RED]
- Determine the feasibility of expanding the use of field citations to Subtitle C of RCRA. [Lead: ORE/RED]
- Provide assistance with Environmental Appeals Board (EAB) appeals. [Lead: ORE/RED]
- Develop procedures to assist the Regions in expediting administrative case settlements. [Lead: ORE/RED]
- Establish a standing team of experienced technical and legal professionals to provide short-term assistance to Regional offices in developing and initiating RCRA enforcement actions involving significant risks to human health or the environment. [Lead: ORE/RED]
- Develop a Combustion Settlement Policy to address facilities that have major operating deficiencies or violations which are incapable or economically infeasible to be corrected. [Lead: ORE/RED]
- Revise the guidance on the use of Section 7003 authority involving imminent and substantial endangerment. Lead: ORE/RED]
- Provide updates to the economic benefit of non-compliance manual. [Lead: ORE/RED]

- Investigate innovative methods for maximizing inspection resources. [Lead: ORE/RED]
- Develop a computer-based training tool for use by the Regions and States for combustion. [Lead: OC/CCSMD]
- Develop a multi-media compliance tool for a subset of combustion data for use by the Regions and States. [Lead: OC/CCSMD]
- Develop waste analysis plans for facilities that burn hazardous waste for use by the Regions and States. [Lead: OC/CCSMD]
- Assist in targeting and enforcing against Federal facilities that are significant waste generators. [Lead: FFE0]

#### HQ Support for Air:

- Establish the framework to implement and enforce the accidental release provisions of the CAA section 112(r) general duty clause. This framework will include legal and technical guidance for the Regions, coordination with CEPP0 and support to the Regions in terms of legal and technical expertise in the development and follow-up on potential cases. [Lead: ORE/AED, with OC and OSWER (CEPP0)]
- Provide enforcement strategies for each MACT standard as these are promulgated, as well as appropriate guidance on penalties to be assessed. [Lead: ORE/AED]
- Develop Compliance Guides for Industries Subject to MACT Rules for Regions to utilize and send to their industries. [Lead: OC/METD]
- Provide guidance on Operating Permits enforcement strategy and penalty policy. [Lead: ORE/AED]
- The Field Citation Program involves a rulemaking under the Clean Air Act which would enable Federal inspectors to issue "traffic tickets" for minor violations. The rule was proposed in May 1994 and the final is projected to be ready for publication in September, 1995. We will develop a training program for Federal, State, and local air inspectors in cooperation with the OAR inspector training program in RTP. The program will be a one- or two-day seminar, focusing on identification of minor violations appropriate for field citations, and calculation of field citation penalties. This program will be transmitted via satellite to all EPA Regions. [Lead: ORE/AED]
- The Citizen Awards program involves a rulemaking under the Clean Air Act which would provide EPA with the ability to make awards of up to \$10,000 to persons who report violations leading to a criminal conviction or civil/judicial administrative penalty. The rule was proposed in May 1994 and is projected to be ready for publication in September, 1995. We will commit award money to a central imprest fund account upon completion of

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several Delegations of Authority. OECA will use this account to pay awards arising from Regional recommendations for informant payments. The Regions will also be authorized to make awards of up to \$500 per person utilizing the national guidance policies and procedures developed by workgroup. The rulemaking is not required for EPA to undertake the awards program; the program is anticipated to begin in FY 95, when the Delegations are expected to be completed. [Lead: ORE/AED]

- Revise AHERA Inspector Training Material once the revised AHERA regulations are final (FY 96). [Lead: OC/METD]
- Guidance for addressing enforcement and compliance of monitoring programs and new market-based programs will be provided as consistent with Agency direction. [Lead: OC/METD]
- Guidance on incorporating pollution prevention to meet new CAA requirements for Federal facilities. [Lead: FFE0]

#### OTHER HQ GENERAL SUPPORT FOR PRIORITIES LISTED IN IV.1, IV.2, AND IV.3:

- Provide guidance on targeting for Part 608 and provide additional training to the Regions. We will also develop a strategy for incorporating Part 609 into a multi-media consolidated inspection. [Lead: OC/CCSMD]
- Assist in conducting inspections where new regulations such as LDAR and HON are applicable. The primary purpose of the inspections will be to assess enforceability of these new regulations and level of compliance achieved prior to promulgation of the regulations. From this effort inspection protocols will be developed. [Lead: NEIC]
- Establish a long distance learning network of federal, State, and tribal enforcement personnel served by NETI. In coordination with the Regions, schedule and deliver training for Regions and States via long distance delivery technologies. [Lead: EC00]
- Continuing delivery of existing compliance/enforcement courses including pollution prevention, environmental justice, multi-media inspections, basic inspector training, negotiations skills and BEN/ABEL. [Lead: EC00]
- Maintenance of the electronic bulletin board and the NETI Library for information access. [Lead: EC00]
- Develop an integration document which will highlight the overlap between the Hazardous Organic NESHAP (HON) and RCRA (LDAR). [Lead: OC/CCSMD]
- Survey and analysis of training needs, especially of States, done in coordination with the Regions. (FY 96) [Lead: EC00]



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- Continue to implement a formal system for strengthening the participation of State, and local authorities in the development of OECA planning, priority setting, and policy development. [Lead: ECOO]
  - Develop and implement FEDPLAN-PC for environmental project review and continue to provide guidance and data management. [Lead: FFE0]
  - Continue to expand FFTS capability, including access for Federal agencies. [Lead: FFE0]
  - Provide Regional access to electronic bulletin boards (FFLEX/ENVIRO\$ENSE). [Lead: FFE0]
  - Training in principles of environmental enforcement and compliance for Regional staff to apply in their domestic work, and training for Regional staff to serve as facilitators in international delivery of the Principles of Environmental Enforcement course. [Lead: OFA]
  - Liaison with the North American Commission on Environmental Cooperation and Office of International Activities (OIA) and national management in responding to claims that EPA has failed to adequately enforce U.S. environmental laws. Claims are expected to be filed by citizens of Canada, Mexico and the U.S. under the NAFTA supplemental environmental agreement. [Lead: OFA]
  - Liaison with Canada and Mexico and national leadership in bilateral and trilateral cooperative enforcement efforts under the NAFTA supplemental environmental agreement. [Lead: OFA]
  - Implement a public access strategy for major compliance and enforcement databases. This activity directly supports the "Build Partnerships and Provide Public Access" operating principle. [Lead: OC/EPTDD]
  - Development of a training program for OECA data systems. This supports all three priority areas (e.g. providing new tools for targeting EJ initiatives). [Lead: OC/EPTDD]
  - Operation and maintenance of new and existing OECA data systems. This supports all three priority areas. [Lead: OC/EPTDD]
  - Maintenance of MOUs for information sharing with other EPA offices (e.g. Headquarters and Regions). [Lead: OC/EPTDD]
  - Completion and implementation of the environmental justice targeting tool to locate areas of possible concern using demographic data. [Lead: OC/EPTDD]
  - Develop guidance to assist Regions in identifying outdated units or facilities that pose high risks within a priority sector or community. [Lead: ORE/RED]
  - Sponsor a national conference to develop improved multi-media enforcement methods. [Lead: ORE/MED]
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- Develop a multi-media inspection training course. This course will be piloted in early FY96 and, subsequently in FY96, several training sessions will be run. We anticipate that a stand-alone training package will be available for use by the Regions by the end of FY96. [Lead: ORE/MED, with NEIC, NETI and OC]
- Undertake a benchmarking study to characterize successful multi-media enforcement techniques. [Lead: ORE/MED]
- Issue guidance on multi-media methods and techniques for addressing national violators. [Lead: ORE/MED]
- Lead a Targeting Network that will work to provide compliance and enforcement staff with sound analytical approaches to targeting industrial sectors, geographic/demographic areas, pollutants, and corporations. The Network will also provide analytical support to OECA's annual planning process and will facilitate communications between affected offices on day-to-day targeting matters. (Lead: OC/EPTDD)

## Rationale for Selecting National Priority Sectors

### Petroleum Refining:

- on a national level, ranked number 1 for noncompliance
- in 8 of the 10 Regions petroleum refining in top ten noncomplying industries:
  - Reg 2--# 2
  - Reg 3--# 3
  - Reg 5--# 5
  - Reg 6--# 2
  - Reg 7--# 9
  - Reg 8--# 6
  - Reg 9--# 6
  - Reg 10--# 5
- Sixth highest amount of TRI Releases and Transfers
- For TRI releases of known carcinogens, ranked number 7
- NEIC is developing a document that outlines the problems they have found in this industry. The document will help regions deal with refineries when they start inspecting them.
- Within the next few months, we should have a comprehensive relative ranking of all petroleum refineries in the country. This will also help the regions decide where to go for inspections. The ranking will factor in TRI release with toxicological weights, demographic information, compliance history and productivity of the facility.

### Dry Cleaners

- Dry cleaners are dominated by small businesses, which are usually exempt from TRI reporting due to their size, but have a significant aggregate impact.
- Dry cleaners have a lack of awareness of environmental regulations, yet potential to be highly regulated.
- Industry eager to work with us.
- Potential for us to make an impact, pollution prevention opportunities.
- Recognize need to build compliance data through inspections

Primary Non-Ferrous

- Nationally ranked third for noncompliance
- significant problem in 7 out of 10 Regions
- in 5 of the 10 Regions primary non-ferrous metals in top ten noncomplying industries:

- Reg 1--#1
- Reg 3--#1
- Reg 4--#1
- Reg 7--#3
- Reg 10--#7

- Fifth highest amount of TRI Releases and Transfers
- For TRI releases of known carcinogens, ranked number 13

October 31, 1994

**MEMORANDUM**

SUBJECT: OECA's Operating Principles for the Common Sense Initiative

FROM: Steven A. Herman  
Assistant AdministratorTO: Administrator  
Deputy Assistant Administrator  
Assistant Administrators  
General Counsel  
Regional Administrators  
Deputy Regional Administrators  
Regional Counsel

The purpose of this memorandum is to establish overall operating principles for handling enforcement and compliance issues for the Common Sense Initiative ("CSI"). The CSI is a unique opportunity to work with our CSI stakeholder partners (i.e., the regulated community, state and local governments, environmental justice, labor, and environmental groups) to develop innovative ways to promote compliance-oriented behavior. These general operating principles are intended to foster the spirit of cooperation that underlies the CSI, and at the same time address key enforcement and compliance related concerns at the outset.

These principles provide a general framework for handling enforcement and compliance concerns during the course of CSI. I anticipate that the CSI sector teams, through pilots, demonstration projects and the like, will generate creative ideas on enforcement and compliance policy for the Agency to consider within the general framework of these operating principles. In addition, OECA expects to consult with the CSI sector teams in the course of several policy reviews currently underway.

Under the CSI, enforcement and compliance assurance concerns are likely to arise in two discrete contexts: 1. as part of the Agency's deliberations regarding whether a CSI project is appropriate at a given facility, and 2. in determining an appropriate response to violations by companies involved in CSI that are identified during the course of CSI. This memorandum sets forth an enforcement response framework that I believe is practical and fair. Simply stated, our policy will be that no one will be singled out for enforcement as a result of participation in CSI, and no one will be immunized from enforcement as a result of participation in CSI. It is our belief that these principles are consistent with the Administrator's goals of fostering a new generation of environmental

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protection while at the same time maintaining the integrity and effectiveness of the enforcement and compliance assurance program.

## I. APPROVAL OF PROJECTS

In reviewing proposed CSI demonstration projects, the Agency should be aware of and consider whether a particular facility is currently scheduled for a planned inspection, under investigation, or involved in an enforcement action with the Agency, the State, local government, or citizens. Information about planned or pending EPA enforcement actions will be shared by OECA on a confidential basis within EPA, and with applicable states as appropriate, and must, for obvious reasons, be taken into account in considering whether or not to undertake a particular demonstration project. The terms of a given proposed project and whether or not it is ultimately approved should depend in part on the nature of the project under consideration and the gravity of any compliance problem under review.

## II. COMPLIANCE PROBLEMS AT FACILITIES WITH CSI PROJECTS

CSI participation should not insulate sectors or companies from enforcement when, apart from CSI, information comes to light that calls for enforcement. However, as a general rule, the mere fact that a sector (or facility) is participating in CSI, will not by itself subject that sector (or facility) to greater scrutiny from an enforcement perspective.

Our enforcement response policy under CSI should reflect a line of demarcation between those circumstances in which information comes to our attention solely by virtue of a company's participation in the CSI (i.e., but for CSI the violation either would not have occurred<sup>4</sup> or we would not have discovered it<sup>5</sup>) and circumstances in which information is generated as a result of compliance monitoring activities separate and apart from CSI. With this general framework in mind, we offer the following guidelines.

1. "No surprises" policy-- OECA will endeavor to ensure that those within the Agency who are responsible for managing the CSI effort are aware of impending enforcement strategies and actions

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<sup>4</sup>Some facilities that are working with us on a CSI demonstration project, such as the development of a consolidated reporting form or the demonstration of an innovative environmental technology may, simply by undertaking the project, run an anticipated risk of violating existing legal requirements.

<sup>5</sup>We can envision a number of scenarios in which noncompliance information that would not have otherwise been discovered by EPA may come to light as a result of CSI. For example, for some sectors-- particularly those comprised of small businesses-- compliance assistance may be an important part of the overall CSI strategy. During the course of administering compliance assistance, whether through "hot lines," where small businesses could call for basic information about compliance requirements and pollution prevention methods, or through site visits, not for purposes of conducting a compliance inspection, but rather for purposes of offering assistance, actionable noncompliance may be revealed. Similarly, noncompliance information may be discovered when EPA visits a facility to explore innovative technology opportunities or improve understanding of regulatory burdens and streamlining opportunities. In addition, the Agency is likely in a variety of contexts to encourage voluntary submissions of information that may contain information on noncompliance.

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involving facilities that are clearly affiliated with companies that are participating in the CSI Council, subcommittees or workgroups. Additionally, in keeping with the spirit of openness that CSI is intended to engender, OECA will ensure that advance notice is provided to facilities that are clearly affiliated with companies participating in the CSI Council, subcommittees or workgroups before a civil or administrative action to assess penalties is brought against them.<sup>6</sup>

2. The Agency must be free to respond to circumstances which may present an imminent and substantial endangerment or other threat to human health or the environment or are criminal in nature, even when discovery of such circumstances is through CSI. With respect to civil violations that do not rise to the level of an endangerment, the Agency's enforcement response policy will necessarily depend on the nature of the project and facility at issue. As appropriate, and subject to such conditions as the circumstances require, the Agency may consider giving facilities performing CSI projects a time-limited opportunity to self-correct violations that are discovered as a result of the project (see, e.g., "Enforcement Response Policy for Treatment of Information Obtained Through Clean Air Act Section 507 Small Business Assistance Programs," August 12, 1994).

3. There may be instances where CSI projects (or specific components of them) by their very design (e.g., the testing of undemonstrated innovative technologies) may raise the risk that existing regulations will be violated during implementation of these projects. In these circumstances, if violations do occur, the fact of the respondent's participation in the CSI project will be taken into account in fashioning an appropriate enforcement response. In particular, such participation may serve to mitigate penalties, if such mitigation is deemed appropriate under the circumstances of the particular project. Further, the interests of the CSI participants and the Agency will be best served if the participants prior to engaging in these projects enter into a written agreement which specifies the terms, conditions, and obligations of the project. The agreement should also speak to the enforcement consequences of project success and failure, as well as how unanticipated results or violations will be addressed.

4. Since the CSI effort is not intended to supplant the Agency's existing enforcement activities, planned and regularly scheduled inspections, on-going investigations, and enforcement actions should continue.<sup>7</sup> Similarly, the deployment of enforcement resources based on current Agency priorities and based on information not secured through CSI will continue. However, as part of its participation on the sector teams, OECA will work closely with the teams to determine how to address any sector-wide compliance concerns.

5. If, consistent with the foregoing, a CSI facility becomes subject to an enforcement action, the facility's performance of a particular CSI project may, consistent with Agency policy, be

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<sup>6</sup> This is consistent with current practice regarding the filing of civil complaints in federal court under the Civil Justice Reform Executive Order (12778)

<sup>7</sup> Regulated facilities are subject to inspection by state and federal authorities at regular intervals; indeed, in some instances, inspection frequency is fixed by law (e.g., RCRA). Moreover, a great deal of compliance information is, by law, self-reported to EPA and the states. Thus, CSI participating facilities will be subject to compliance review as a matter of course.

considered an indicator of good faith efforts to comply for penalty assessment purposes, assuming that the CSI project is related in some way to the violation of concern in the enforcement case.

cc: OECA Office Directors and Division Directors  
Regional CSI Enforcement Contacts  
CSI Sector Team Leads  
Vivian Daub  
Steve Harper



### OECA CORE PROGRAM ACTIVITIES

#### Planning/Management Elements

- o Program planning (including development of MOA, strategic plans, etc.)
- o Budget development/monitoring and oversight
- o State/territory program monitoring and oversight (including oversight of grants/cooperative agreements, etc.)
- o State/territory program capacity building, review and evaluation
- o Contract management, training and oversight

#### Data Management Elements

- o Data management including data input, review, analysis and QA/QC activities in support of all parts of OECA program (compliance, enforcement, site remediation, criminal, federal facilities)

#### Compliance Program Elements

- o Compliance Monitoring
  - Conducting inspections not addressed by the States
  - Inspection targeting
  - Inspector training and guidance
- o Review permits, exception reports, certifications, monitoring protocols, self-monitoring reports, etc.
- o Laboratory support
- o Compliance assistance outreach/education/training to regulated community
- o Applicability determinations

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Enforcement Program Elements

- o Take timely and appropriate enforcement actions.
- o Issue proposed and final administrative orders
- o Case development and support
- o Oversee compliance with schedules contained in final orders and consent decrees
- o Develop civil and or criminal referrals to DOJ
- o Conduct overfiling where requested or appropriate
- o Participate in national initiatives
- o Oversight and monitoring of SEPs
- o Environmental Services Division support
- o Expert witnesses for case support
- o Assistance provided to Regional criminal enforcement counsels

Site Remediation Elements

- o CERCLA Elements
  - Address Cost Recovery Sites
  - Maximize PRP Participation
  - Achieve early settlements with Small Volume Contributors
  - Support Communities with EJ Concerns related to SF
- o RCRA Corrective Action Elements
  - Implement Stabilization Initiative
  - Focus resources at high NCAPS facilities
  - Assess Non-notifiers/converters
- o Remediate sites with leaking underground storage tanks
- o Collect penalties for violations of Section 311(b) of OPA



Federal Facility Elements (not included in above categories)

- o Negotiate/amend and enforce IAGs for federal facility site cleanups
- o Implement E.O. 12856 and assist Federal Facilities to develop required P2 plans and assessments
- o Pursue reimbursement from Federal agencies for EPA and State cost of RCRA TSD facility inspections
- o Coordinate A-106 annual review process.

# Office of Enforcement and Compliance Assurance

## Reporting for Enforcement and Compliance Assurance Priorities (RECAP)

### FY 1996

## Reporting for Enforcement and Compliance Assurance Priorities (RECAP)

Attachment V presents the FY 1996/1997 reporting measures for Enforcement and Compliance Assurance. The measures track with the recommendations made by the Office of Enforcement and Compliance Assurance (OECA) Measures of Success Workgroup (the Final Report of the Workgroup was transmitted in a January 24, 1995, memorandum from Elaine Stanley), and they establish a foundation for more effective measurement of the activities and environmental and programmatic results of the Agency's redesigned compliance and enforcement program. The new set of measures has been named "Reporting for Enforcement and Compliance Assurance Priorities (RECAP)."

The Enforcement Planning, Targeting, and Data Division in the Office of Compliance committed to review the former STARS measures that conveyed to OECA from the former Office of Enforcement and the media program offices with an eye toward dropping measures determined no longer to be needed. The attached RECAP measures reflect the results of that review. The only measures which will require upfront numerical commitments/projections will be those for media-specific inspections and drinking water SNC. Refer to Attachment VI for these charts.

The former STARS measures which conveyed to OECA have been reduced by 44%, and the associated data points have been reduced by 27% (these are contained in Sections III, IV, and V). Overall, the total number of measures in RECAP (the former STARS measures plus the new measures recommended by the Workgroup) reduce by 30% the total number of measures that conveyed to OECA, and the number of RECAP data points reported reduce by 12% the number that conveyed to OECA.

In addition to the streamlined measures, RECAP measures include:

- 1. Re-engineering of existing reporting on noncompliance rates to create multimedia profiles for sectors, communitybased activities, pollutantspecific activities, and corporate perspectives.** EPTDD will report on these measures (contained in Section I of the attachment) through use of existing reporting on noncompliance levels, Significant Noncompliance, enforcement actions, inspections, and TRI releases and transfers. EPTDD will develop the profiles using data integration techniques, newly-improved data linkages, SIC codes, facility location data, and demographic information. Programming work on these reports is ongoing and OECA will pilot profile data reporting during the third quarter of FY 1995.
- 2. Section I of Attachment V also contains measures for compliance assistance that have been developed by an OECA workgroup.** For FY 1996/1997 we are asking the Regions to report on their compliance assistance activities using these measures and to work with their States to ask them to voluntarily use these measures. Use of the measures will enable the States to discuss the positive outcomes of their compliance assistance activities. We anticipate that the measures may change after States and Regions have experience using them. (Attachment VII provides a more detailed discussion and background for the compliance assistance measures.)
- 3. Systematic reporting of the environmental and programmatic impacts of compliance and enforcement.** OECA is pilot testing these measures, contained in Section II of Attachment V, in all ten Regions using the recently developed judicial and administrative **case conclusion data sheet**. The measures and definitions may be modified based on an analysis of the pilot reporting process during the summer months. Any modifications to the data collected or the definitions suggested by the analysis will be coordinated with the affected offices in Headquarters and the Regions.
- 4. A more comprehensive approach to counting enforcement activities through an Enforcement Activity Index** The Index (contained in Section IV of this attachment) will use existing reporting to track information on the initiation and conclusion of civil judicial cases, criminal enforcement activities, significant administrative actions, and

activities that address significant noncompliance at Federal facilities. Environmental justice cases will also be identified beginning in the second half of FY 95 using new fields available in the Enforcement Docket system. This information will be consistent with the case conclusion data sheet and will allow electronic reporting for both concluded and initiated civil and administrative cases. By showcasing conclusions, staff and managers will demonstrate that case resolution to achieve results and not just case initiation to produce new “beans” is the true value of enforcement actions. OECA is conducting a pilot test of reporting under the index with data for the first two quarters of FY 1995. The results of the pilot will be shared with Headquarters and Regional offices to identify definitional or reporting issues.

The RECAP measures are organized by measure type or function (e.g., all of the Significant Noncompliance measures are contained in the same section), rather than the past standard practice of organizing measures by media or statutes. Under the new numbering system, the four letter prefix indicates the media program or noncompliance profile type (the first character) and type of measure (the second through fourth characters). For example, “RSNC” refers to RCRA Significant Noncompliers, “RACT” refers to RCRA administrative enforcement actions, and “RINS” refers to RCRA inspections. To facilitate implementation, the RECAP numbering system has been cross referenced with the former STARS code number, where appropriate.

If you have any questions or comments on the attached measures, please call Rick Duffy at 564-5014 or Joe Acton at 564-5002.

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INDEX TO RECAP ACRONYMS:

IPRO: Industrial profile

GRPO: Geographical (community-based) profile

PPRO: Pollutant profile

CPRO: Corporate profile

COMP: Compliance assistance

CCDS: Case conclusion data sheet (relates to data collected under

Measures of Success pilot)

RSNC: RCRA significant noncompliance

ASNC: CAA (Air) significant noncompliance (significant violator)

WSNC: CWA (Water) significant noncompliance

DSNC: SDWA (Drinking Water) significant noncompliance

JACT: Civil judicial referral (judicial action)

CACT: Criminal judicial referral

AACT-1R: RCRA administrative enforcement activity (compliance

order, penalty order)

AACT-1W: CWA administrative enforcement activity

AACT-1DW: SDWA administrative enforcement activity

AACT-1T: TSCA administrative enforcement activity

AACT-1E: EPCRA administrative enforcement activity

AACT-1P: FIFRA administrative enforcement activity (Pesticides)

AACT-1PA: Oil Pollution Act administrative enforcement activity

AACT-1WL: Wetlands Act administrative enforcement activity

MINS: Multi-media inspection activity

RINS: RCRA inspection activity

AINS: CAA (Air) inspection activity



WINS: CWA inspection activity

INDEX TO RECAP ACRONYMS (cont.):

PINS: FIFRA (Pesticides) inspection activity

TINS: TSCA inspection activity

EINS: EPCRA inspection activity

CINS: Chemical Emergency Preparedness and Prevention Program inspection activity

FFAC: Federal facilities enforcement activity

## **Section I**

### **Measures and Definitions:**

**Multi-media Noncompliance Profiles for Industrial Sectors,  
Community-Based Approaches (Geographic/Demographic Areas), Pollutants of Concern, and  
Corporations**

**Compliance Assistance Activities and Impacts**

## Multi-Media Noncompliance Profiles for Industrial Sectors, Community-Based Approaches (Geographic/Demographic Areas), Pollutants of Concern, and Corporations

**GOAL:** Develop quantitative information that can be used by OECA and the Regions in decisionmaking on compliance and enforcement priorities, and to establish baseline data against which progress can be measured over time.

**OBJECTIVE:** Utilizing information which is currently available through the compliance and enforcement data systems and the Toxics Release Inventory, develop cross-program/multi-media noncompliance profiles for selected industrial sectors, geographic/demographic areas, pollutants of concern, and corporations.

**MEASURE: Industrial Sectors.** Using IDEA-based data integration techniques, OECA will develop noncompliance profiles for selected industrial sectors at the 2, 3, and/or 4 digit SIC code level that track rates of noncompliance, levels of TRI reported releases and transfers, enforcement activities, inspection frequencies, and the impact of compliance assistance activities over time. The profiles will include, at a minimum, the following types of information from the program compliance and enforcement data systems, the Enforcement Docket and TRI:

- a. facility and/or permit noncompliance rate over the most recent eight quarters;
- b. data on the level of significant noncompliance;
- c. TRI release and transfer data;
- d. EPA and State enforcement activity data;
- e. inspection frequency data.

**OECA Number: IPR01**

**TARGETED: No**

**REPORTED: Q2,4**

**MEASURE: Community-Based.** Using IDEA-based data integration techniques, OECA will develop noncompliance profiles for Community-based approaches (e.g., for particular geographic areas such as States, counties, zip codes, or census blocks) that track rates of noncompliance, levels of TRI reported releases and transfers, enforcement activities, inspection frequencies, and the impact of compliance assistance activities over time. (Regions have the discretion to prepare community-based profiles and reports.) The profiles will include, at a minimum, the following types of information from the program compliance and enforcement data systems, the Enforcement Docket, and TRI:

- a. facility and/or permit noncompliance rate over the most recent eight quarters;
- b. data on the level of significant noncompliance;
- c. TRI release and transfer data;
- d. EPA and State enforcement activity data;
- e. inspection frequency data;
- f. data on income levels and population demographics.

**OECA Number: GPR01**

**TARGETED: No**

**REPORTED: Q2,4**

**MEASURE:** **Pollutants of Concern.** Using IDEA-based data integration techniques, OECA will develop noncompliance profiles for selected pollutants that track the rates of noncompliance, levels of TRI reported releases and transfers, enforcement activities, inspection frequencies, and the impact of compliance assistance activities over time. The profiles will include, at a minimum, the following types of information from the program compliance and enforcement data systems, the Enforcement Docket, and TRI:

- a. facility and/or permit noncompliance rate over the most recent eight quarters;
- b. data on the level of significant noncompliance;
- c. TRI release and transfer data;
- d. EPA and State enforcement activity data;
- e. inspection frequency data;
- f. as available, information on toxicities (or relative toxicities);
- g. data on income levels and population demographics.

**OECA Number:** PPR01

**TARGETED:** No

**REPORTED:** Q2,4

**MEASURE:** **Corporations.** Using IDEA-based data integration techniques, OECA will develop noncompliance profiles for corporations that track rates of noncompliance, levels of TRI reported releases and transfers, enforcement activities, inspection frequencies, and the impact of compliance assistance activities over time. The profiles will include, at a minimum, the following types of information from the program compliance and enforcement data systems, the Enforcement Docket, and TRI:

- a. facility and/or permit noncompliance rate over the most recent eight quarters;
- b. data on the level of significant noncompliance;
- c. TRI release and transfer data;
- d. EPA and State enforcement activity data;
- e. inspection frequency data.

**OECA Number:** CPR01

**TARGETED:** No

**REPORTED:** Q2,4

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## Compliance Assistance Activities and Impacts

**MEASURE:** Impact on Compliance Assistance Activities§. For all compliance assistance programs in the Regions and States, please provide the following:\*\*

- a. number of entities (public and private) within the industry sector or community.
- b. number of these entities receiving on-site compliance assistance.
- c. number of these entities receiving other than on-site compliance assistance.
- d. to assist future targeting of compliance assistance efforts, provide a tabulation of the most common compliance problems identified within each sector or community.
- e. improvements in understanding/awareness of compliance, and behavior changes (e.g.):
  1. number of entities that are satisfied with the compliance assistance they have received.
  2. numb

## Section II

### Measures and Definitions:

#### Impact and Results Measures Case Conclusion Data Sheet

- Case and Facility Background Data
- Environmental Justice Indicator
- Injunctive Relief
- Supplemental Environmental Projects
- Penalty Information
- Cost Recovery Information

## Measures

### PROGRAM AREA: Case Conclusion Data Sheet Information

**GOAL:** Develop information that characterizes the environmental and programmatic impacts and results of compliance and enforcement.

**OBJECTIVE:** Implement systematic reporting on the environmental and programmatic impacts of compliance and enforcement.

Case Conclusion Data Sheet- Background Information. Current planning calls for fully automating case conclusion reporting through the OECA Docket database by the end of calendar year 1995. Standard case and facility background information that will be required include case name, facility (site) name, EPA Enforcement Docket Number (case number), EPA/FINDS Identification, Court Docket/Regional Hearing Clerk, EPA lead contacts, SIC code, Dun & Bradstreet number, statutes, and action type.

Impact and results measures include:

**MEASURE:** Environmental Justice:  
 a. was the Agency activity taken in response to environmental justice concerns?

**OECA Number:** CCD~~SI~~ (Cross-Reference to STARS Code: not applicable)

**TARGETED:** No

**REPORTED:** Q2,4

**MEASURE:** Injunctive Relief Information:  
 a. was injunctive relief obtained through this action?  
 b. If yes, provide description of the physical actions taken to address violations or problems.  
 c. cost of physical actions described in item b.  
 d. description of the environmental impact of physical actions, where applicable:  
 e. as a result of this action, is previously unknown information (e.g., due to improper labeling, reporting, record keeping,

available to the Agency, the public facilities, or workers? If yes unpermitted activities) reported about pollutants/chemicals now provide identity and volume of pollutants/chemicals.

f. describe and quantify any other impact and conditions of settlement (e.g., reduced worker and/or population exposures) d conditions of settlement (SEP impacts are not to be included here).

**OECA Number:** CCD~~S~~ (Cross-Reference to STARS Code: not applicable)

**TARGETED:** No

**REPORTED:** Q2,4

**MEASURE:** SEP Information:  
 a. Category of SEP (a. Public Health; b. Pollution Prevention (1. Equipment/technology mod., 2. Process or procedure mod., 3. Product reformulation/redesign, 4. Raw materials substitution, 5. Improved housekeeping/O&M/training/inventory



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- control, 6. Inprocess recycling, 7. Energy efficiency/conservation, 8. Other), Pollution Reduction; d. Environmental Assessments and Audits; f. Environmental Compliance Promotion; g. Emergency Planning and Preparedness; h. Other specific SEP (identify)
  - b. SEP Description(s)
  - c. SEP cost (net present after tax cost of the SEP using the Project Model or other methodology that provides an explanation of the method for arriving at the estimate.).
  - d. Are environmental justice concerns addressed by SEP?
  - e. Environmental Impact of SEP (1. Pollutant(s) and/or chemical(s)and/or waste streams and amount of reductions/eliminations (e.g., emissions/discharges), and 2. describe other impacts and quantify, where possible)

**OECA Number: CCD~~3~~ (Cross-Reference to STARS Code: not applicable)**

**TARGETED: No**

**REPORTED: Q2,4**

- MEASURE:** Penalty Information:
- a. dollar amount of final assessed penalty.
  - b. if shared, Federal share.
  - c. if shared, State or other share.
  - d. for multi-media actions, Federal amounts by statute.

**OECA Number: CCD~~4~~ (Cross-Reference to STARS Code: not applicable)**

**TARGETED: No**

**REPORTED: Q2,4**

- MEASURE:** Cost Recovery Information:
- a. amount of cost recovery awarded.

**OECA Number: CCD~~5~~ (Cross-Reference to STARS Code: not applicable)**

**TARGETED: No**

**REPORTED: Q2,4**

## Definitions

### PROGRAM AREA: Case Conclusion Data Sheet

#### Enforcement Docket Case and Facility Background Information

- **EPA Enforcement Docket Number (Case Number)** This number uniquely identifies each case. The number is assigned by a Docket analyst as the case is opened in the Docket and consists of a 2-digit responsible office code (Regions 0410, HQ); the 2-digit fiscal year that the case is opened; and a four-digit sequentially assigned number (00009999) for that year.
- **Case Name:** This is the name assigned to the enforcement action when first tracked in the Docket and/or another system. Generally the primary defendant's name is used as the case name.
- **a. EPA/FINDS Identification Number** This is the number assigned by EPA to uniquely identify an EPA monitored facility or site. This is the same EPA identification number used by the FINDS database. It is a 12-character alphanumeric field.
- **b. EPA Program Identification Number** This is the number assigned by the media program data base.
- **Facility (Site) Name:** This is the name of the facility as it appears in the FINDS database.
- **Primary 4digit SIC Code Other 4digit SIC Codes:** The primary code is the standard industrial classification (SIC) code which describes the predominant economic activity at a facility. The secondary codes reflect SIC classifications for additional economic activities at the facility. SIC Codes are established by OMB.
- **Dun & Bradstreet Number:** The Dun & Bradstreet Number is a unique 9-digit number assigned by D & B to a physical location which conducts economic activity. This number can be obtained through FINDS, IDEA, or NEIC's financial analyses of corporations.
- **Court Docket/Regional Hearing Clerk Administrative Docket** For judicial cases the Court docket number is assigned by the U.S. District Court. For administrative cases the Regional Hearing Clerk will assign the Regional Administrative Docket number.
- **EPA Lead Attorney:** For Regional cases, this is the lead attorney assigned by the Regional Office; for HQ cases, this person is assigned by the responsible Office of Regulatory Enforcement division. The last name and first initial are given.
- **EPA Program Contact:** The last name and first initial of the Program technical contact assigned to the case by the responsible Regional or HQ office.
- **Statute(s):** Entry should be made for each distinct violation identified in the complaint. For each distinct violation enter the section and statute being violated. Where State violations are cited, Federal equivalents should be recorded.
- **Action Type:**
  - a. Consent decree or court order entered resolving a civil judicial action
  - b. Administrative penalty order w/ or w/o injunctive relief (an administrative case signed by the final EPA official (e.g., RA, DRA, or Division Director) for which the relief sought may or may not include injunctive relief; and includes an assessed penalty Superfund administrative cost recovery (an administrative case signed by the final EPA official (e.g., RA, DRA, or Division Director) for cost recovery. This is a judicial enforcement action to recover Federal, State, or local expenses for environmental correction, litigation or similar activities from a party or parties responsible for all or a portion of the environmental problem)
  - c. Federal facility compliance agreement (not including RCRA matters);
  - e. Field citation (an administrative action requiring relief of a violative condition and/or setting penalty issued on-site by credentialed EPA representative).
- **Is this a multimedia action?** This asks what action or actions have triggered the responsible office to consider the case as multimedia. For example a settlement addressing a violation in one program includes issues covered under other programs.
- **Was this action a part of a geographic initiative?** This indicates whether the responsible office developed this case as part of an effort directed at protecting an ecosystem, urban environment, or other defined location.
- **Was Alternative Dispute Resolution used in this action?** Alternative Dispute Resolution (ADR) is a procedure, such as mediation or arbitration, used by EPA in resolving differences with companies, groups, and/or individuals over enforcement-related issues in lieu of traditional adversarial methods.

**OECA Number: CCDSI (Cross-Reference to STARS Code: not applicable)**

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Was the Agency activity taken in response to Environmental Justice concerns? This indicates whether the responsible office developed the case in response to environmental justice concerns.

**OECA Number: CCD~~2~~ (Cross-Reference to STARS Code: not applicable)**

If the concluded administrative or judicial action required alleviation or correction of environmental violations or problems, the required relief should be characterized. This includes describing the physical actions taken to address violations or problems; the cost of physical actions described (actual costs supplied by the violator are the preferred cost figure). For Superfund though, this should be the estimated value of RP work to be performed as included in the ROD or other documents.

Environmental impact of physical actions, where applicable, should be described. Regions should use common regional usage of terms if no national guidance exists and characterize pollutants in familiar terms (e.g. emissions/discharge, pounds and CAS #'s (if available); measurements reflect reduced amounts chemical(s) registered: (pollutants or waste in pounds, kilograms or liquid measure); the percent reduced should be computed; and the media where pollutants or waste were emitted (e.g. land, water, air) should be identified. If possible, pollution impacts should be expressed in annual levels.

As a result of this action, is previously unknown information (e.g., due to improper labeling, reporting, record keeping, unpermitted activities) reported about pollutants/chemicals now available to the Agency, the public facilities, or workers? If yes provide identity and volume of pollutants/chemicals.

The intent of this data element is to collect information on pollutants/chemicals/wastes which previously had not been to EPA and/or local agencies.

Describe and quantify any other impact and conditions of settlement (e.g., reduced worker and/or population exposures) and conditions of settlement (SEP impacts should not be included here).

This is a subjective description of benefits other than those having to do with the correction of a violative condition, e.g. worker training or community outreach. Quantitative estimates are encouraged.

**OECA Number: CCD~~3~~ (Cross-Reference to STARS Code: not applicable)**

**Category of SEP**

**a. Public Health:** A public health project is defined as one which provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation.

**b. Pollution Prevention** (1. Equipment/technology mod.; 2. Process or procedure mod.; 3. Product reformulation/redesign; 4. Raw materials substitution; 5. Improved housekeeping/O&M/training/inventory control; 6. Inprocess recycling; 7. Energy efficiency/conservation; 8. Other): A pollution prevention project is one which reduces the generation of pollution through 'source reduction', i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment prior to recycling, treatment or disposal. (If the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment or disposal methods.)

**c. Pollution Reduction:** A pollution reduction project is one which results in a decrease in the amount or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by a means which does not qualify as 'pollution prevention'.

**d. Environmental Restoration and Protection:** An environmental restoration and protection project is one which goes beyond repairing the damage caused by the violation to enhance the condition of the environment adversely affected.

**e. Assessments and Audits:** Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. Site assessments are investigations of the condition of the environment at a site, or of the environment impacted by a site, and/or investigations of threats to human health or the environment relating to a site. Environmental compliance audits are an independent evaluation of a defendant/respondent's compliance status with environmental requirements.

**f. Environmental Compliance Promotion**An environmental compliance promotion project involves the dissemination of information, or the providing of training or technical support, to a regulated party or to some or all members of the defendant/respondent's economic sector to: (1) achieve and maintain compliance with regulatory requirements; (2) determine what are its regulatory requirements and thereby avoid committing a violation; or (3) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements.

**g. Emergency Planning and Preparedness**An emergency planning and preparedness project is one where a defendant/respondent provides assistance, such as computers and software, telephone/radio communications systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training for first responders to chemical emergencies, to a responsible State or local planning entity.

**h. Other programs**specific SEP(identify)

SEP cost (net present after tax cost of the SEP using the Project Model). Actual SEP costs supplied by the violator are the preferred cost figure. Otherwise the Project model calculates other factors affecting the dollar value of the SEP such as costs over time, tax savings, and other factors. Questions about this model can be directed to Jonathan Libber at (202)664-6644. Methods other than the Project Model are acceptable so long as the estimate can be explained.

Environmental Impact of SEP:  
**a.** Pollutant(s) and/or chemical(s)and/or waste streams and amount of reductions/eliminations (e.g., emissions/discharges). Regions should use common regional usage of terms if no national guidance exists, and should characterize pollutants in familiar terms or with CAS numbers (if available); measure amounts should indicate reductions or eliminations (measure pollutants or waste in pounds, kilograms or liquid measure); the percent reduced or eliminated should be computed; and the media should be identified. When possible, computation of pollution impacts should be expressed in annual levels.  
**b.** Describe other impacts and quantify, where possible.

**OECA Number: CCD84 (Cross-Reference to STARS Code: not applicable)**

**Penalty Information:**

**a. Dollar amount of final assessed penalty**For civil judicial cases, this amount is the penalty assessed against the defendant(s) as specified in the final entered Consent Decree, or Court Order. For administrative cases it is the penalty assessed in the final Order.

**b. If shared, Federal share:**This is the amount of the final assessed penalty that is due the Federal government.

**c. If shared, State or other share:**This is the amount of the final assessed penalty due the State or other government.

**d. For multimedia actions, Federal amounts by statute:**To the extent that it can be specified this is an allocation of the final assessed penalty across each statute involved in a multimedia case.

**OECA Number: CCD85 (Cross-Reference to STARS Code: not applicable)**

Amount of cost recovery awarded. This is the amount of cost recovery ordered or agreed to be repaid by the responsible party or parties in accord with either a concluded administrative or judicial case, by EPA, State/local, or others.

## **Section III**

### **Measures and Definitions:**

#### **Program Specific Significant Noncompliance Measures**

## Significant Noncompliance Measures

### PROGRAM AREA: RCRA

**OBJECTIVE:** Ensure the environmentally sound management of solid and hazardous waste and create a more effective RCRA Subtitle C Program.

**MEASURE:** For SNCs in existence as of October 1, 1995:

- a. Report the total number of facilities currently in significant noncompliance.
- b. Report the number of SNCs that have had formal actions and have not returned to compliance with violations which caused them to be in SNC.
- c. Report the number of SNCs that are on enforceable compliance schedules and are in compliance with the schedule.
- d. Report the number of SNCs that are on enforceable compliance schedules and are in violation of the schedule.
- e. Report year-to-date the number of SNCs that have achieved physical compliance (no outstanding Class I violations).

**OECA Number:** RSN01 (Cross-Reference to STARS Code: R/E-2a, R/E-2b, R/E-4a, & R/E-4b)

**TARGETED:** No

**REPORTED:** Q2,4

### PROGRAM AREA: Air (Stationary) Enforcement

**OBJECTIVE:** Achieve and maintain high levels of compliance with regulations promulgated under the Clean Air Act and maintain an appropriate level of enforcement by EPA and State and local agencies.

**MEASURE:** Report on Class A and synthetic minor (SM) SIP sources and NSPS sources:

- a. number of operating Class A and SM SIP sources and NSPS sources
  - b. number of those sources at the end of quarter:
    - in violation
    - meeting schedules
    - with unknown status
  - c. status of significant violators
    - significant violators added year to date
    - significant violators addressed year to date
    - significant violators deleted year to date for valid reasons (mistakenly added)
    - total significant violators unaddressed being tracked year to date
      - total significant violators addressed being tracked year to date
    - significant violators addressed year to date within 150 days
    - significant violators addressed year to date within 151-365 days

- significant violators addressed year to date beyond 365 days
- significant violators unaddressed for more than 365 days year to date
- significant violator lead changes year to date

**OECA Number: ASN1 (Cross-Reference to STARS Code: A/E1, A/E-3, A/E-5, A/E-9, A/E-20)**

**TARGETED: No**

**REPORTED: Q2,4**

**OBJECTIVE:** Increase and expand the technical capabilities of State and local agencies to implement Clean Air Act amendments

new air toxic program activities that meet the requirements of Title III of the

**MEASURE:** Report for non-transitory NESHAP sources:

- a. number of non-transitory NESHAP sources
- b. number of NESHAP sources at the end of the quarter:
  - in violation
  - meeting schedules
  - with unknown status
- c. status of NESHAP significant violators
  - significant violators added year to date
  - significant violators addressed year to date
  - significant violators deleted year to date for valid reasons (mistakenly added)
  - total significant violators unaddressed being tracked year to date
  - total significant violators addressed being tracked year to date
  - significant violators addressed year to date within 150 days
  - significant violators addressed year to date within 151-365 days
  - significant violators addressed year to date beyond 365 days
  - significant violators unaddressed for more than 365 days year to date
  - significant violator lead changes year to date

**OECA Number: ASN2 (Cross-Reference to STARS Code: A/E2)**

**TARGETED: No**

**REPORTED: Q2,4**

**OBJECTIVE:** Increase and expand the technical capabilities of State and local agencies to implement new air toxic program activities that meet of Title III of the Clean Air Act amendments

the requirements

**MEASURE:** Report on status of asbestos demolitions and renovation program, for States and EPA:

- a. number of notifications of demolition received
- b. number of inspections completed
- c. number of NOV's and NODs
- d. number of notification violations identified
- e. number of substantive violations identified  
(data are lagged one quarter)

**OECA Number: ASN3 (Cross-Reference to STARS Code: A/E6)**

**TARGETED: No**

**REPORTED: Q2,4**

**PROGRAM AREA: Wastewater**

**OBJECTIVE:** Achieve and maintain high levels of compliance with the NPDES program.

**MEASURE:** Report, by Region and State, the number of major NPDES permittees, as well as the number of POTWs with approved pretreatment programs. Of these, report the number of major permittees in Significant Noncompliance (SNC) (municipal, industrial, Federal) and the number of approved pretreatment programs in SNC with pretreatment.

**OECA Number: WSN1 (Cross-Reference to STARS Code: WQ/E5)**

**TARGETED: No**

**REPORTED: Q1,2,3,4**

**MEASURE:** Report, by Region and State, the number of major NPDES permittees, as well as the number of POTWs with approved pretreatment programs in significant noncompliance for two or more consecutive quarters without returning to compliance or being addressed by a formal enforcement action (Active Exceptions List) -- list both new facilities (those in SNC for two quarters) and unresolved facilities (those facilities which are in SNC for three or more quarters).

**OECA Number: WSNC-2 (Cross-Reference to STARS Code: WQ/E-6)**

**TARGETED: No**

**REPORTED: Q 1,2,3,4**

**MEASURE:** Report, by Region and State, the number of major NPDES permittees, as well as the number of POTWs with approved pretreatment programs that are on the previous exceptions list which have returned to compliance, the number addressed by a formal enforcement action (Resolved Exceptions List). Identify reported Exceptions List facilities by name and NPDES number and number of quarters in significant noncompliance.

**OECA Number: WSN3 (Cross-Reference to STARS Code: WQ/E7)**

**TARGETED: No**

**REPORTED: Q1,2,3,4**

**PROGRAM AREA: Drinking WaterPublic Water Supply**

**OBJECTIVE:** Protect public health through ensuring compliance with drinking water standards.



**MEASURE:** Negotiate, with each State, annual targets for the number of Significant NonCompliers (SNCs) and the number of exceptions that will be appropriately addressed through State or Regional actions, or returned to compliance by June 1, 1996, and reported to OECA by June 22, 1996 for each of the three categories listed below. The target numbers will be based on the number of SNCs occurring as of the compliance period ending March 31, 1995, and the number of exceptions existing as of June 1, 1995 (both will be contained on the July 1995 SNC/Exception Report):

- 1) micro/turbidity SNCs and exceptions;
- 2) chem/rad SNCs and exceptions
- 3) Surface Water Treatment Rule

**OECA Number: DSN~~1~~** (Cross-Reference to STARS Code: DW/~~H~~)

**TARGETED:** Yes, Q3

**REPORTED:**

**MEASURE:** Report, using the SNC/Exception Report format, those systems identified as SNC/Exceptions that: returned to compliance; had an appropriate enforcement action taken against them; or remained unaddressed. Report separately for each of the following groups:

- 1) micro/turbidity SNCs and exceptions
- 2) chem/rad SNCs and exceptions
- 3) Surface Water Treatment Rule

**OECA Number: DSN~~2~~** (Cross-Reference to STARS Code: DW/~~E~~)

**TARGETED:** No

**REPORTED:** Q2,3,4

**PROGRAM AREA: Drinking Water Underground Injection Control**

**MEASURE:** Identify, by Region, for EPA, States and Indian Tribes with primacy, the number of wells in significant noncompliance and the number of wells that appear on the Exceptions List from the date the violation becomes an exception through the date the violation is resolved, noting the date the final enforcement action was taken, if any.

**OECA Number: DSN~~3~~** (Cross-Reference to STARS Code: DW/~~E~~)

**TARGETED:** No

**REPORTED:** Q2,4

## Significant Noncompliance Definitions

### PROGRAM AREA: RCRA

**OECA Number: RSN1** (Cross-Reference to STARS Code: ~~R/E-2a~~, R/E-2b, R/E-4a, & R/E-4b)

This measure reports the number of SNCs in existence as of October 1, 1995. In this measure SNCs are defined as: (1) For the period prior to 1988 (1987 should not be pulled), LDFs with Class I violations for GW, FR and C/PC; or (2) For FY '88'89, LDFs with Class I violations for GW, FR and C/PC or corrective action compliance schedules at all TSDFs; or (3) For FY '90, TSDFs that are classified as High Priority Violators (HPVs) according to the revised 1987 Enforcement Response Policy (ERP). Included are those TSD facilities that are designated HPVs because of land disposal restriction violations; or (4) For FY '91 and beyond, any TSDF, Generator or Transporter identified as a High Priority Violator according to the Enforcement Response Policy, or in accordance with definitions applicable as a result of revisions made to the 1987 ERP. At the time of the publication of these measures revisions to the 1987 ERP are under consideration in an effort being led by the Office of Regulatory Enforcement's RCRA Enforcement Division.

From the universe of SNCs in existence as of October 1, 1995 which have been out of compliance for three or more years, this measure reports the number of SNCs that have had formal actions that have not returned to compliance with all violations which caused them to be in SNC. In this measure SNCs are defined as: For the period prior to 1988, LDFs with Class I violations for GW, FR and C/PC; or (2) For FY '88'89, LDFs with Class I violations for GW, FR and C/PC or corrective action compliance schedules at all TSDFs; or (3) For FY '90, TSDFs that are classified as High Priority Violators (HPVs) according to the revised Enforcement Response Policy (ERP). Included are those TSD facilities that are designated HPVs because of land disposal restriction violations; or (4) For FY '91 and beyond, any TSDF, Generator or Transporter identified as a High Priority Violator according to the Enforcement Response Policy.

This measure reports, year-to-date, the number of TSDFs in full physical compliance with no outstanding Class I violations.

This measure reports, year-to-date, the number of TSDFs where every outstanding Class I violation is on a compliance schedule as a result of a formal enforcement action and there are no violations of any of the compliance schedules.

### PROGRAM AREA: Air (Stationary)

**OECA Number: ASN1 & ASNG2** (Cross-Reference to STARS Code: ~~A/E-1~~, A/E-3, A/E-5, A/E-9, A/E-20 & A/E-12)

**Definition of a Significant Violator** - Agencies shall deem a source to be a Significant Violator (SV) if it is:

1. A "major" source (as defined by the CAAA, except for asbestos demolition and renovation (D & R) NESHAP), and it violates any one or more of the following:
  - a. SIP emission, monitoring or substantial procedural requirements, regardless of pollutant and designation status.
  - b. NSPS emission, monitoring or substantial procedural requirements.
  - c. NESHAP emission, monitoring or substantial procedural requirements for existing NESHAP standards and promulgated MACT standards.
  - d. SIP, NSPS, NESHAP emission, procedural or monitoring requirements violated repeatedly or chronically (e.g., exceeds emission limit or gets no continuous monitoring data for 5% or more of the time in a calendar quarter).
  - e. Any provision of a Federal Consent Decree or Federal Administrative Order.
  - f. Any substantive provision of a State Judicial Order or a State Administrative Order which was issued for an underlying SIP violation.
  - g. Any requirement of Part C of Part D of Title I of the CAAA (e.g., new construction or a major source, major modification of a major source).
2. Any synthetic minor source and it is in violation of any one or more of the following:
  - a. Avoiding PSD while violating an emission limit or permit condition which affects PSD status.

b. Exceeding its permitted emission standard above the amount that would classify the source as a nonattainment area major source.

With respect to emergency episodes or sources which construct without a valid PSD or Part D permit (where one is required), the emergency episodes, the seriousness of the violation would normally require expedited action. In the case of a source constructed without a required PSD or Part D permit, options for obtaining relief may be foreclosed by allowing the source to continue to construct and, therefore, expedited action may be essential.

\* Source: February 7, 1992, memorandum from John S. Seitz and Robert Van Heuveln entitled "Issuance of Guidance on the "Timely and Enforcement Response to Significant Air Pollution Violators."

Appropriate

#### **PROGRAM AREA: Wastewater**

##### **OECA Number: WSN~~1~~ (Cross-Reference to STARS Code: WQ/~~15~~)**

A permittee is reported to be in significant noncompliance for failure to comply with NPDES permit requirements if it meets the criteria in the QNCR Guidance Manual, 1985. An approved pretreatment program should be identified as in significant noncompliance when it meets the criteria for SNC identified in the FY 1990 Reporting an Evaluating POTW Noncompliance with Pretreatment Requirements, issued September 27, 1989. At the time of the publication of these measures revisions to the NPDES SNC definition are under consideration in an effort being led by the Office of Regulatory Enforcement's Water Enforcement Division.

##### **OECA Number: WSN~~2~~ & 3 (Cross-Reference to STARS Code: WQ/~~16~~ & 7)**

**NOTE:** In regard to all major permittees listed in significant noncompliance on the Quarterly Noncompliance Report (QNCR) for any quarter, Regions/NPDES States are expected to ensure that these facilities have returned to compliance or have been addressed with a formal enforcement action by the permit authority within the following quarter (generally within 60 days of the end of that quarter). Where it is apparent that the State will not take appropriate formal enforcement action before the end of the following quarter, the States should expect the Regions to do so. In the rare circumstances where formal enforcement action is not taken, the administering Agency is expected to have a written record that clearly justifies why the alternative action (e.g., enforcement action, permit modification in process, etc.) was more appropriate. This translates for Exceptions List reporting as follows:

Exceptions Lists reporting involves tracking the compliance status of major permittees listed in significant noncompliance on two or more consecutive QNCRs without being addressed with a formal enforcement action. Reporting begins on January 1, 1996 based on permittees in SNC for the quarters ending June 30, and September 30, that have not been addressed with a formal enforcement action by November 30. The name list along with the numbers are due January 1, 1996 (and quarterly thereafter). Regions are also expected to complete and submit with their Exceptions List a fact sheet which provides adequate justification (an adequate justification includes the following: an explanation as to why the facility has not returned to compliance or why a formal enforcement action has not been issued; what the Region plans to do to remove the facility from the Exceptions List and when) for a facility on the Exceptions List. The fact sheet should be submitted by the 15th day of the beginning of the next quarter (i.e., January 15, 1996 and quarterly thereafter). After a permittee has been reported as returned to compliance or addressed by a formal enforcement action, it should be dropped from subsequent lists.

Reporting is to be based on the quarter reported in the QNCR (one quarter lag).

Returned to compliance (refer to the QNCR Guidance for a more detailed discussion of SNC and SNC resolution) for Exceptions List facilities refers to compliance with the permit, order, or decree requirement for which the permittee was placed on the Exceptions List (e.g., same outfall, same parameter). Compliance with the conditions of a formal enforcement action taken in response to an Exception List violation counts as an enforcement action (rather than return to compliance) unless the requirements of the action are completely fulfilled and the permittee achieves absolute compliance with permit limitations. The Exceptions List includes pretreatment SNC.

Formal enforcement actions against nonfederal permittees include Federal Administrative Compliance Orders or State equivalent action, a judicial referral (sent to HQ/DOJ/SAG), or a court approved consent decree. A section 309(g) penalty administrative Order (AO) will not, by itself, count as a formal enforcement action since it only assesses penalties for past violations and does not establish remedies for continuing noncompliance. Payment of penalties does not remove a permittee from the Exceptions List. Unless the permittee has returned to compliance, a 309(a) compliance order should accompany the 309(g) penalty order. Formal enforcement actions against federal permittees include Federal Facility Compliance Agreements, documenting the dispute and forwarding it to Headquarters for resolution, or granting them Presidential exemption.

**PROGRAM AREA: Drinking Water Public Water Suppl**

**OECA Number: DSN1 (Cross-Reference to STARS Code: DW/E1)**

This measure requires Regions to negotiate targets with each State for the number of SNCs and exceptions off a fixed base which will be appropriately addressed or returned to compliance by June 1996. The process for establishing commitments for this measure is the same as in FY 95.

This list of systems will be provided by early July. Regions should submit their proposed commitments with the draft MOA by mid-August. These proposed commitments will be the subject of discussion during the MOA negotiation. Final commitments will be incorporated in the signed MOA by the end of September or early October.

Using the list, Regions are to negotiate targets with each State for the number of systems that will be appropriately addressed (either by State or Federal action) or returned to compliance by June 22, 1996. Separate targets should be negotiated for the Surface Water Treatment Rule, microbiological/turbidity, and for chemical/radiological SNCs/exceptions. In general, if a State has a relatively small number of SNCs/exceptions, we expect the State/Region to commit to address 100% of the systems. If the Region cannot commit to address 100%, an explanation of which systems will not be addressed and why must be provided along with your proposed commitments. Please remember that in order to be counted towards the commitment, the enforcement action must be taken or the return to compliance must occur by June 1996. Note that as in prior years, actions taken in the fourth quarter of FY 95 also count towards your commitments.

It is our understanding, generally, that Regions and States should have the resources to address the systems on the fixed base as well as other high priority systems that come up during the year. Where appropriate, substitutions will be allowed under the following conditions: (a) the Region (and State) have more SNCs/exceptions on the fixed base than it can address with both regional and State resources; (b) the name of the system for which the substitution is being made, as well as the system which is the substitute, is provided, in advance.

**OECA Number: DSN2 (Cross-Reference to STARS Code: DW/E2)**

This measure will report those systems, which met any of the SNC/exception criteria, which returned to compliance, had an appropriate enforcement action taken against them, or remain unaddressed. In addition to reporting system by system followup information, Regions are to report summary numbers, one for each of the following categories: 1) micro/turbidity SNCs; 2) chemical/radiological SNCs; 3) micro/turbidity exceptions; 4) chemical/radiological exceptions; and 5) Surface Water Treatment Rule.

"Returned to Compliance" for SNC/exceptions of a microbiological MCL and/or M/R requirement, a turbidity MCL and/or M/R requirement, or a TTHM M/R requirement, is having no violations (either MCL or M/R), of the same contaminant which caused the system to become a SNC, during the six month period after the system was identified as a SNC. "Returned to Compliance" for SNC/exceptions of a chemical or radiological analytical level is conducting analyses that demonstrate that the system no longer exceeds the MCL. "Returned to Compliance" for SNC/exceptions of a chemical (other than TTHM) or radiological monitoring requirement is conducting the required monitoring and determining that the system does not exceed the MCL. An "appropriate enforcement action" for SNC/exceptions is any of the following:

- (a) the issuance of a bilateral, written compliance agreement signed by both parties, which includes a compliance schedule (only appropriate for use by States).
- (b) the issuance of a final State or Federal Administrative Order.

- 
- (c) the referral of a civil judicial case to the State Attorney General, or DOJ.
  - (d) the filing of a criminal case in an appropriate State or U.S. District court.

Timeliness for SNCs is eight months after the system became an SNC. (Two months for the State to determine, and become aware of, the system's SNC status and six months in which to complete the follow-up/enforcement action). An "exception" is a system which was: a) a SNC which has not returned to compliance or was not addressed timely and/or appropriately, b) a SNC previously addressed appropriately which fails by more than 60 days to meet a milestone of a compliance schedule, or c) a SNC system appropriately addressed by referring a civil or criminal case to the State AG but which has not been filed within 120 days of the referral. **Note:** EPTDD will provide the form for this report.

### **PROGRAM AREA: Drinking Water Underground Injection Control**

**OECA Number: DSN~~3~~ (Cross-Reference to STARS Code: DW/~~4~~)**

This measure tracks those wells in significant noncompliance, where timely and appropriate enforcement actions have not been taken. The term "significant noncompliance" means: (a) any violation by the owner/operator of a Class I or a Class IV well, (b) the following violations by the owner/operator of a Class II, III or V well: (1) any unauthorized emplacement of fluids (where formal authorization is required); (2) well operation without mechanical integrity which causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering a USDW; (3) well operation at an injection pressure that exceeds the permitted or authorized injection pressure and causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering a USDW; (4) failure to perform an MIT when requested; (5) the plugging and abandonment of an injection well in an unauthorized manner; (6) any violation of a formal enforcement action, including an administrative or judicial order; consent agreement; and/or judgment or equivalent State or Indian Tribe action; (7) the knowing submission or use of false information in a permit application, periodic report or special request for information about a well. **NOTE:** in the absence of information to the contrary, MIT failures and pressure exceedances are presumed to be SNCs.

The State or Region should take one of the following actions within 90 days after the SNC is identified: (1) verify that the owner/operator has returned to compliance; (2) initiate a formal enforcement action against the owner/operator; or (3) place the owner/operator on an enforceable compliance schedule and track to ensure future compliance. A formal enforcement action is any of the following: (a) the issuance of a proposed Administrative Order by EPA; (b) the referral of a civil judicial case to the State Attorney General or to DOJ by EPA; (c) the filing of a criminal case in an appropriate State or U.S. District Court; or (d) the issuance of an equivalent State enforcement action which meets the criteria for a formal action, e.g. pipeline severance.

The performance expectation is that all facilities on the Exceptions List should be removed as quickly as possible. Only in unique situations should any facility appearing on the Exceptions List in the first quarter remain on the list through the entire fiscal year, and in such cases Regions and States should provide adequate documentation in each case file regarding reasons for lack of resolution.

## Section IV

### Measures and Definitions:

**Consent Decree Tracking**  
**Enforcement Activity Index**  
**Judicial (Civil and Criminal) Enforcement Actions**  
**Program-Specific Administrative Enforcement Actions**

## Measures

### PROGRAM AREA: Civil/Criminal Judicial Enforcement

**GOAL:** Ensure vigorous enforcement against violations of environmental statutes.

**OBJECTIVE:** Track compliance with the terms and conditions of judicial consent decrees and address instances of noncompliance with appropriate actions.

**MEASURE:**

Provide a quarterly report on the compliance status of

EPA consent decrees by Region and statute.

Regional reports include both the names and numbers of:

- a. Active consent decrees
- b. Active consent decrees in compliance
- c. Active consent decrees in violation where formal enforcement action has commenced
- d. Active consent decrees in violation where formal enforcement action is planned but has not commenced
- e. Active consent decrees in violation with no formal enforcement action planned or necessary
- f. Active consent decrees for which current status is unknown or not reported

**OECA Number:** JACTI (Cross-Reference to STARS Code: E/C2)

**TARGETED:** No

**REPORTED:** Q2,4

**OBJECTIVE:** Maintain the initiation of new enforcement actions and promote successful conclusion of open cases, providing the Regions with flexibility to balance their resources between the initiation of new actions and conclusion of actions already underway.

**MEASURE:** Enforcement Activity Index. Using data from the Enforcement Docket, the compliance data systems, and the Office of Criminal Enforcement, EPTDD will develop a report semiannually on the cumulative number of EPA enforcement action initiations and successful case completions of cases listed below. For penalty actions, EPTDD will report data on the amount of the Federal assessed penalties and the amount of cost recovery. Data will be presented by statute and by Region.

for the types  
amount

**Case initiations:**

- a. Civil judicial referrals to the Department of Justice
- b. Criminal referrals to the Department of Justice
- c. Complaints issued for administrative penalties
- d. Federal facility compliance agreements initiated

**Case conclusions:**

- a. Civil judicial cases concluded
- b. Criminal cases concluded (include cases for which parts of a case have concluded during FY)
- c. Final administrative penalty orders issued
- d. Administrative compliance orders (non penalty) issued
- e. Final federal facility compliance agreements issued

**Federal penalty assessments:**

- a. Federal civil judicial penalties assessed
- b. Federal criminal penalties (\$) assessed
- c. Federal administrative penalties assessed
- d. Federal CERCLA cost recovery resulting from civil judicial cases concluded
- e. Federal CERCLA cost recovery resulting from final administrative orders.

**OECA Number: JACT2 (Cross-Reference to STARS Code: None)**

**TARGETED: No**

**REPORTED: Q2,4**

**OBJECTIVE:** Monitor judicial enforcement activity levels

**MEASURE:**

judicial actions. Report the cumulative totals for all programs for the following:

- a. New direct referrals to DOJ from Regions (including referred PRN's and Consent Decree enforcement cases)
- b. New pre-referral negotiations cases initiated
- c. New referrals to HQ from Regions

Report quarterly on the cumulative number of EPA civil

**OECA Number: JACT3 (Cross-Reference to STARS Code: E/C)**

**TARGETED: No**

**REPORTED: Q2,4**

**PROGRAM AREA: Multimedia Enforcement**

**GOAL:** Integrate a cross-program/multimedia perspective into all stages of enforcement planning, case development and decisionmaking.

**OBJECTIVE:** Encourage the use of multimedia approaches at all stages of the enforcement process, including targeting, case development and settlements.

**MEASURE** Report the following multimedia enforcement activities:

- a. Number of new multimedia civil judicial referrals
- b. Number of new multimedia judicial/administrative cases
- c. Number of multimedia administrative cases
- d. Number of single media cases with multimedia aspects

**OECA Number: JACT4 (Cross-Reference to STARS Code: E/C)**

**TARGETED: No**

**REPORTED: Q2,4**



**PROGRAM AREA: Criminal Judicial Enforcement**

**GOAL:** Ensure vigorous, timely, and high quality enforcement against violations of environmental statutes.

**OBJECTIVE:** Provide support to program offices and Regions in developing criminal enforcement actions.

**MEASURE:**

EPA criminal actions. Report will include the following:

Report cumulatively by principal statute on the status of

Number of new investigations opened.

b. Number of investigations closed prior to referral to the Department of Justice (DOJ), or to state/local prosecutors.

c. Number of cases referred to DOJ.

d. Number of cases referred to state or local prosecutors.

e. Number of defendants charged.

f. Number of defendants sentenced.

g. Amount of fines assessed (before suspension).

h. Months of incarceration ordered (before suspension).

**OECA Number:** CACTI (Cross-Reference to STARS Code: E/9)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: Administrative Enforcement Activity RCRA**

**GOAL:** Ensure the environmentally sound management of solid and hazardous waste.

**OBJECTIVE:** Create a more effective RCRA Subtitle C Program.

**MEASURE:** Report for EPA and the States the number of formal administrative complaints issued year-to-date and the number of final administrative orders issued year-to-date (including 3008(a), 3008(h), 3013 and 7003).

**OECA Number:** AACTIR (Cross-Reference to STARS Code: R/E1a)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: Administrative Enforcement Activity Air (Stationary)**

**OBJECTIVE:** Maintain an appropriate level of air enforcement by EPA and State and local agencies

**MEASURE:** Report on air enforcement actions:

a. number of State and EPA administrative orders issued.

b. number of State and EPA administrative penalty order complaints issued.

c. number of State and EPA final administrative penalty orders issued.

d. number of State civil actions filed and criminal actions taken.

**OECA Number:** AACTIA (CrossReference to STARS Code: A/E9)  
**TARGETED:** No  
**REPORTED:** Q2,4

**PROGRAM AREA: Administrative Enforcement ActivityWastewater**

**OBJECTIVE:** Achieve and maintain high levels of compliance in the NPDES program.

**MEASURE:** For NPDES, Sludge and Pretreatment violators, report by Region, the total number of (a) EPA Administrative Compliance Orders and the total number of State equivalent actions issued; of these, report the number issued to POTWs for not implementing pretreatment; (b) Class I and Class II proposed & final administrative penalty orders issued by EPA; and (c) Administrative penalty orders issued by States.

**OECA Number:** AACTIW (CrossReference to STARS Code: WQ/B)  
**TARGETED:**No  
**REPORTED:** Q2,4

**MEASURE:** Report, by State, the active civil and criminal case docket, the number of civil and criminal referrals sent to the State Attorneys General, the number of civil and criminal cases filed, the number of civil and criminal cases concluded (identify the penalty amount obtained by the State in the cases concluded). Report civil and criminal separately.

**OECA Number:** AACI2W (CrossReference to STARS Code: WQ/B)  
**TARGETED:** No  
**REPORTED:** Q2,4

**PROGRAM AREA: Administrative Enforcement ActivityDrinking Water/Public Water Supply**

**OBJECTIVE:** Protect public health through ensuring compliance with drinking water standards.

**MEASURE:** Report, by Region, the total number of EPA Administrative Orders and the total number of State equivalent actions issued. For States also report the number of cases referred to the State Attorney General.

**OECA Number:** AACTIDW (CrossReference to STARS Code: DW/E)  
**TARGETED:** No  
**REPORTED:** Q2,4

**PROGRAM AREA: Administrative Enforcement ActivityDrinking Water/Underground Injection Control**

**OBJECTIVE:** Ensure that wells are operating safely and take appropriate enforcement action.

**MEASURE:** Report, by Region, the total number of EPA Administrative Orders and the total number of State equivalent actions issued. For States also report the number of cases referred to the State Attorney General.

**OECA Number:** AAC12DW (Cross Reference to STARS Code: DW/12)

**TARGETED:** No

**REPORTED:** Q2,Q4

**PROGRAM AREA: Administrative Enforcement Activity Toxic Substances**

**GOAL:** Attain and sustain compliance by maintaining an enforcement presence in the regulated community, identifying noncompliance in a risk based manner and taking effective enforcement actions in an impartial and consistent manner.

**OBJECTIVE:** Respond to noncompliance and promote future compliance through issuance of appropriate enforcement actions.

**MEASURE:** EPA Enforcement Actions Under TSCA. For the enforcement actions listed below, specify on a cumulative basis, the number of:

- a. Administrative Complaints issued
- b. Notices of Noncompliance issued

**OECA Number:** AACTIT (Cross Reference to STARS Code: T/1)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: Administrative Enforcement Activity EPCRA**

**GOAL:** Attain and sustain compliance by maintaining an enforcement presence in the regulated community, identifying noncompliance in a risk based manner and taking effective enforcement actions in an impartial and consistent manner.

**OBJECTIVE:** Establish and maintain a strong compliance/enforcement presence in the regulated community.

**MEASURE:** Report on EPA Enforcement Actions Under EPCRA:

- a. EPCRA § 313 non-reporter enforcement actions
- b. EPCRA § 313 data quality enforcement actions
- c. EPCRA § 304 and CERCLA § 103 enforcement actions
- d. EPCRA § 311 and § 312 enforcement actions

**OECA Number:** AAC1E (Cross Reference to STARS Code: E/1)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: Administrative Enforcement Activity Pesticides (FIFRA)**

**GOAL:** Attain and sustain compliance by maintaining an enforcement presence in the regulated community, identifying noncompliance in a timely manner and taking effective enforcement actions in an impartial and consistent manner.

**OBJECTIVE:** Establish and maintain a high level of compliance in the regulated community.

**MEASURE:** State Enforcement Actions. Specify the cumulative number of State formal enforcement actions and/or proceedings for the same inspectional categories as those in measure AACIP. The five actions to be aggregated in this number include:

- a. Civil Complaints Issued
- b. Criminal Actions Referred
- c. License/Certificate Suspension
- d. License/Certificate Revocation
- e. License/Certificate Conditioning or Modification

In addition, separately specify the cumulative number of Warning Letters Issued and Stop Sale Orders Issued resulting from the group of inspectional categories in measure AACIP. Note: State data are lagged one quarter.

**OECA Number:** AACIP (Cross Reference to STARS Code: P/E)

**TARGETED:** No

**REPORTED:** Q2,4

**OBJECTIVE:** Respond to noncompliance and promote future compliance through issuance of appropriate enforcement actions.

**MEASURE:** EPA Enforcement Actions Under FIFRA. For the enforcement actions listed, specify on a cumulative basis, the total number of:

- a. Civil Complaints issued
- b. Warning letters issued
- c. SSUROs issued
- d. Recalls issued
- e. Import Detentions issued

**OECA Number:** AACIP (Cross Reference to STARS Code: P/E)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: Oil Pollution Act Program**

**GOAL:** To prevent harmful releases of hazardous substances into the environment.

**OBJECTIVE:** Reduce catastrophic or harmful releases of hazardous substances.

**MEASURE:** For the Oil Pollution Act, report the number of Administrative Penalty Enforcement Actions for violations under the Clean Water Act S. 311(b)(3), and S.311(j).

**OECA Number:** AACTIPA (CrossReference to STARS Code: OP~~A~~)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: Wetlands Protection**

**GOAL:** No net loss of the Nation's wetlands (by functions and acres)

**MEASURE:** Number of:  
a. wetlands enforcement cases initiated  
b. wetlands cases resolved.

**OECA Number:** AACTIWL (CrossReference to STARS Code: WQ/E11 and WQ/E12)

**TARGETED:** No

**REPORTED:** Q2~~4~~

## Definitions

### PROGRAM AREA: Civil Judicial Enforcement

**OECA Number: JACT1**

**Cross-Reference to STARS Code: E/C1**

For Agency consent decree tracking and followup procedures, please refer to the OECA Directive on Consent Decree Tracking and Followup (January 11, 1990, memorandum from James M. Strock). Regions will report on the compliance status of EPA consent decrees each quarter. This includes both the name and number of: (a.) active consent decrees; (b.) active consent decrees in compliance; (c.) active consent decrees in violation where formal enforcement action has commenced; (d.) active consent decrees in violation where formal enforcement action is planned but has not yet commenced; and (e.) active consent decrees in violation with no action planned or deemed necessary at this time (facility is expected to return to compliance without enforcement action).

For the purposes of reporting on consent decree tracking and followup, the following definitions apply:

1. Reportable Violation- A decree will be reported as in violation if any term or condition of the decree is not complied with as of the end of the quarter.
2. Appropriate Enforcement Action- Formal enforcement actions include motions for contempt, motions to enforce the order, motions for specific performance, collection of penalties, decree modifications and contractor listing.
3. Final Compliance Determinations- Cases where the final compliance date in the decree has been reached and the source is not meeting final compliance limits or conditions of the decree, the decree shall be reported in category (c), (d) or (e) of measure E/C, depending on the circumstances. If the Region has determined that the source will not be able to meet the final terms of the decree, and enforcement action is planned, the Region will continue to report the decree in category (d) until one of the acceptable enforcement actions previously defined has been commenced. At that time, the decree will be reported as violation with enforcement action commenced and shall remain in that category until it is returned to compliance with the decree. If the Region has determined that the final terms of the decree will be met, the Region will report the violation in category (e) in violation with no action planned at this time. When the final terms of the decree are met, the decree will be reported in the compliance category for that reporting period and then deleted from the consent decree universe.
4. Consent Decree Tracking for Multiple Facility Consent Decrees- Consent decrees covering more than one facility will be reported as a single consent decree. Actions taken to address violations at more than one facility covered by the same decree will be reported and counted individually for internal Agency accountability and resources distribution purposes. Actions against multiple facilities covered by the same decree will be accounted for in the significant noncomplier lists and the enforcement actions tracked in measure JACT

**OECA Number: JACT2**

**Cross-Reference to STARS Code: None**

#### Case initiations

Civil judicial referrals to the Department of Justice-The number of civil referrals to DOJ is primarily based on the number of complaints referred to DOJ during the current fiscal year for filing in Federal court. Data for this measure are taken from the Agency civil judicial docket based on referral dates entered in the "date to DOJ." In order to determine the total number of referral credits, these data are supplemented with: the number of consent decree enforcement referrals which are referred to DOJ to enforce against violations of existing judicial consent decrees; and additional credits for civil judicial referrals which address discrete multimedia violations and multiple violating facilities. The current method for counting and crediting multimedia and multi-facility referrals was established in FY 1991 (see definition under measure JACT above). Data in these fields are maintained by each Region's ORC office and the data is audited nationally after Regions have the opportunity to preverify that the docket data has been correctly entered.

Criminal referrals to the Department of Justice Data for this measure are taken from the Agency criminal docket which is maintained by OCE and by the SAIC offices in each Regional Office.

Complaints issued for administrative penalties Data for this measure are taken from the Agency civil docket and are retrieved from the docket using the field for “administrative issued date” in combination with the field for “proposed penalty.” Data in these fields are maintained by each regional ORC office and the data is pulled nationally after Regions have the opportunity to pre-verify that the docket data has been correctly entered.

### Case conclusions

Civil judicial cases concluded This measure reports the number of civil judicial cases successfully concluded during the year. Concluded cases reported here include all cases which are resolved with a consent instrument (with or without a penalty), are resolved through litigation (whether EPA wins or loses), and cases which are resolved as a result of a defendant’s agreement (docket result code source agrees). Cases which are concluded as a result of the withdrawal of the case by the Region, the declination of the case by DOJ or the U.S. Attorney, the deferral of the case to a State, or the combining of the case with another active judicial case are not counted as concluded cases for this measure. In addition, civil judicial cases which are resolved through the issuance of administrative orders are not credited as civil judicial conclusions, although they are credited as either compliance orders or administrative penalty orders (depending on whether a penalty is included as part of the order). Data for this measure are taken from the civil docket using fields for the concluded date and the result codes, which are maintained by the ORCs.

Criminal cases concluded- This measure reports on the number of criminal cases (or parts of criminal cases) which have been concluded during the year. Frequently, criminal cases include multiple charges and multiple defendants which are resolved during different fiscal years. Aspects of a criminal case which are fully resolved during the current fiscal year will be credited in that year.

Final administrative penalty orders issued This measure reports the number of final administrative orders issued which include a federal assessed penalty. Administrative orders which had been initially issued (and counted/credited) as complaints for penalties but which are issued as orders without a penalty are counted as final administrative compliance orders (see below). Data for this measure are taken from the civil docket using fields for the “final order issued date” and “assessed Federal penalty,” which are maintained by the ORCs.

Administrative orders (non penalty) issued This measure reports the number of final administrative (nonpenalty) orders issued. Penalty orders are not included in this count except where an APO complaint is later issued as a final order without a penalty. These orders are generally unilaterally issued. To count as an administrative order, the order must compel compliance and be legally enforceable. Data for this measure will be reported through the national program databases.

**OECA Number: JACT3**

**Cross-Reference to STARS Code: E/C**

Monitor judicial enforcement activity levels The “new referrals to HQ from Regions” category reports the number of civil judicial cases referred to HQ from the Regions during the fiscal year, irrespective of whether they have also been referred to DOJ during the year. Over the last few years, the number of referrals to HQ has decreased as most cases are referred directly to DOJ. The number of (a) referrals to HQ and (b) the number of direct referrals to DOJ added together equal the total number of newly initiated Regional referrals during the year, and show what type of referrals (direct and indirect) were made. These two outputs are drawn from the DOCKET by selecting Regional cases using the “date to DOJ” field and the RFIN (referral indicator) field which is coded either RD (referral [direct] to DOJ), RH (referral to HQ).

Also reported in this measure are the number of PRN type cases which were newly initiated (initial report to DOJ) during the fiscal year, but which were not later also referred to DOJ (i.e., no full litigation package or signed consent decree was referred subsequently during the year). PRNs which were initiated during the year and later also referred would be counted in the “direct referrals to DOJ” category. In effect, PRN cases are counted as PRNs until the Region refers a full litigation package or a signed consent decree; at that point they are counted as direct referrals. (If the Region completes a full litigation report in the place of a initial report, but for the purposes of handling the case as a PRN, it is counted as a PRN.)

The referral activity reported in this measure includes the number of referrals made to DOJ to enforce against consent decree violations. These cases are counted as civil referrals to DOJ and are also reported as a subcategory of referrals.

Starting in FY91, the method of counting all civil referral categories was adjusted to provide appropriate referral credit for both multimedia and multi-facility cases. In these cases, violations under different programs/Statutes are combined in multimedia referrals so that a holistic enforcement response can be made by EPA. Since these violations are discrete problems which were

historically generally enforced separately, each discrete enforceable separate program component counts as a civil referral credit. Similarly, cases which combine actions against separate facilities in a unified referral package are given referral credit for each facility with a discrete enforceable violation.

**PROGRAM AREA: Multimedia Enforcement**

**OECA Number: JACT4**

**Cross-Reference to STARS Code: E/8**

These multimedia activities are reported by each Region after the second and fourth quarter using their own information gathering sources and methods. In developing their regional multimedia activity reports, Regions should apply the following definitions and guidelines:

1. (re: measure a) A consolidated referral is a referral in which at least two discrete environmental problems, from different programs, are combined into one referral package or an additional violation (from a different program) is added as an amendment to an existing judicial referral or complaint. A coordinated referral is a separate referral package related to an existing referral or complaint for which the consent decree negotiation/resolutions are to be comprehensive but for which the referral or complaint have not been combined.
2. (re: measure b) Administrative/judicial cases are cases for which EPA is pursuing both judicial and administrative approaches to addressing violations and other environmental problems within an overall coordinated multimedia enforcement approach.
3. (re: measure c) the type of administrative actions to be credited are actions which meet the STARS criteria of the program for which credit is included, generally administrative orders. (Warning letters, NOVs, and complaints are not usually counted as administrative actions in STARS). Federal facility compliance agreements are creditable actions.
4. Enforcement actions (civil or administrative) brought under more than one statutory authority, but which address an environmental problem in only one program should not be included in the count of multi-media actions.
5. (re: measure d) Includes singlemedia settlements with multimedia Supplemental Environmental Projects, multimedia pollution prevention projects, and/or settlement provision addressing an environmental problem under a different program that was not part of the original case referral.

**PROGRAM AREA: Criminal Enforcement**

**OECA Number: CACT1**

**Cross-Reference to STARS Code: E/9**

1. Open Investigations- The agent determines that evidence may exist that shows the violation of an environmental statute or regulation. A preliminary investigation results in the opening of a case. A project number is requested from Criminal Investigation Division (CID) and all investigatory activities are charged to that number. An OCI docket number is assigned and a case form is submitted for entering the investigation in the EPA Criminal Docket. Subsequent activities are charged against the project number and described in the EPA Criminal Docket.
2. Investigations Closed Prior to Referral to DOJ Investigation has shown: that the allegations were unfounded; the case should be referred for administrative civil action, the case should be referred to another agency or law enforcement office; or there is lack of prosecutorial merit. Includes cases in which the investigation is suspended and the information in the closed investigations retained for intelligence purposes.

**PROGRAM AREA: RCRA**

**OECA Number: AACT1R**

**Cross-Reference to STARS Code: R/1a**

This measure reports the number of formal administrative complaints and final orders issued year-to-date including §§3008(a), 3008(h), 3013 and 7003.

**PROGRAM AREA: Wastewater**

**OECA Number: AACT1W**



**Cross-Reference to STARS Code: WQ/8**

Headquarters will report EPA Administrative Compliance Orders (AOs) and State equivalent actions from PCS. All AOs must be entered into PCS by the 2nd update of the new quarter to be counted in the report. For pretreatment, only AOs issued to POTWs should be counted here. Where an AO or APO includes both pretreatment and NPDES violations, the AO should be counted once and considered a pretreatment AO/APO. For purposes of counting State penalty orders, any order which proposes the assessment of a cash penalty against a violator may be counted. Where the State has a two step process (similar to EPA's process) the proposed order should be counted. NPDES APOs are to be reported through the OECA Civil Enforcement Docket system.

**OECA Number: AAC12W**

**Cross-Reference to STARS Code: WQ/9**

The active case docket consists of all referrals currently at the State Attorney General and the number of referrals filed in State Court. A case is concluded when a signed consent decree is filed with the State Court; the case is dismissed by the State Court; the case is withdrawn by the State Attorney General after it is filed in a State Court; or the State Attorney General declines to file the case. OECA will report the same data for Federal referrals; State referrals will be reported to the Regions.

**PROGRAM AREA: Oil Pollution Act**

**OECA Number: AAC1PA**

**Cross-Reference to STARS Code: OPA3 & OPA-4**

Administrative Penalty Enforcement Actions for Spill and Prevention Regulation ViolationThe number of administrative enforcement actions resulting from violations of §311(b)(3) and §311(j) of the Clean Water Act.

**PROGRAM AREA: Wetlands**

**OECA Number: AAC1WL**

**Cross-Reference to STARS Code: WQ/E1 & WQ/E12**

Number of Wetlands enforcement cases initiated:

- a. Section 309(a) administrative compliance orders issued by EPA. As a general rule, such orders should require the violator not only to stop the illegal discharge, but also where feasible to take affirmative action to remove the fill/or restore the site.
- b. Section 309(g) administrative penalty complaints issued by EPA.

Number of cases resolved:

- a. Number of cases resolved through voluntary compliance, which occurs where the Region has not initiated any formal enforcement action against an illegal discharger, but instead achieves compliance through informal processes.
- b. Number of section 309(a) compliance orders where the violator has complied with the terms of the order.
- c. Number of section 309(g) administrative penalty actions in which the respondent has paid the penalty to the Region or, in those situations where payment is due and not forthcoming, where a federal district court has issued a final order requiring payment of the assessed penalty.



## **Section V**

### **Measures and Definitions:**

### **Inspections**

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**PROGRAM AREA: Multimedia Enforcement**

**GOAL:** Integrate a cross-program/multi-media perspective into all stages of environmental enforcement planning and decisionmaking.

**OBJECTIVE:** Encourage application of multimedia/cross-program enforcement approaches to achieve additional health and environmental protection results, deterrence, and efficiency which could not have been achieved by traditional single-media approaches alone.

**MEASURE:** For multi-media enforcement inspections report:

- a. Number of consolidated multimedia inspections and the number of times each program participated in a consolidated inspection
- b. Number of coordinated multimedia inspections and the number of times each program participated in a coordinated inspection
- c. Number of single media inspections with a completed multimedia checklist

**OECA Number:** MINSI (Cross-Reference to STARS Code: E/8)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: RCRA Enforcement**

**GOAL:** Ensure the environmentally sound management of solid and hazardous waste.

**OBJECTIVE:** Create a more effective RCRA Program.

**MEASURE:** Report, year-to-date:

- a. the number of Land Disposal facilities that received an inspection in FY 1996. (State and Region combined)
- b. the number of Treatment, Storage facilities that received an inspection in FY 1996. (State and Region combined)
- c. the number of Generators (SQG and LQG) that received an inspection in FY1996. (State and Region combined)
- d. the number of Hazardous Waste Transporters that received an inspection in FY 1996. (State and Region combined)

**OECA Number:** RINSI (Cross-Reference to STARS Code: R/5a, R/E-6b, R/E-6c, R/E-6d)

**TARGETED:** No

**REPORTED:** Q2,4

**PROGRAM AREA: Air (Stationary)**

**MEASURE:** Report:

- a. for major and synthetic minor NSPS, SIP, and NSR sources the number of flagged planned inspections

- b. for major and synthetic minor NSPS, SIP, and NSR sources the number of flagged inspections achieved (data lagged 1 qtr.)
- c. for minor NSPS, SIP, and NSR sources the number of flagged planned inspections
- d. for minor NSPS, SIP, and NSR sources the number of flagged inspections achieved (data lagged 1 qtr.)
- e. for nontransitory NESHAP sources the number of flagged planned inspections
- f. for nontransitory NESHAP sources the number of flagged inspections achieved (data lagged 1 qtr.)

**OECA Number:** AINS1 (Cross-Reference to STARS Code: A/E1, A/E-3, A/E-5, A/E-9, A/E-12)

**TARGETED:** Yes

**REPORTED:** Q2,4

**MEASURE:** Report on status of asbestos demolitions and renovation program, for States and EPA:

- a. number of notifications of demolition received
- b. number of inspections completed

**OECA Number:** AINS2 (Cross-Reference to STARS Code: A/E6)

**TARGETED:** Yes

**REPORTED:** Q2,4

**MEASURE:** Acid Precipitation Report on the status of SO2 and NOX sources with continuous monitoring requirements (CEMS, CSA):

- a. number of units requiring CEMs or CSA
- b. number of units operating and reporting, and for which EPA is processing Excess Emissions Reports.

**OECA Number:** AINS3 (Cross-Reference to STARS Code: A/E5)

**TARGETED:** Yes

**REPORTED:** Q2,4

**MEASURE:** CFC Program Report on:

- a. number of inspections conducted (lagged one quarter)
- b. number of violations found (NOVs issued) during the last 2 quarters

**OECA Number:** AINS4 (Cross-Reference to STARS Code: A/E7)

**TARGETED:** Yes

**REPORTED:** Q2,4

**MEASURE:** Wood Heater NSPS Report on:

- a. number of inspections conducted (lagged one quarter)
- b. number of violations found (NOVs issued) during the last 2 quarters
- c. number of audits performed (RCA or SEA) during the last 2 quarters

**OECA Number:** AINS5 (Cross-Reference to STARS Code: A/E8)

**TARGETED:** Yes

**REPORTED:** Q2,4

**PROGRAM AREA: Wastewater**

**OBJECTIVE:** Identify compliance problems and guide corrective action through inspections.

**MEASURE:** Track by Region and State, against semiannual targets, the number of major facilities with NPDES inspections; the number of Class I facilities receiving sludge management inspections; and the number of pretreatment POTWs receiving pretreatment compliance inspections. (combine EPA and State inspections and report each of the above three categories separately).

**OECA Number:** WINSI (Cross-Reference to STARS Code: WQ/H0)

**TARGETED:** Yes

**REPORTED:** Q2,4

**PROGRAM AREA: Pesticides Enforcement**

**GOAL:** Attain and sustain compliance by maintaining an enforcement presence in the regulated community, identifying noncompliance in a risk based manner and taking effective enforcement actions in an impartial and consistent manner.

**OBJECTIVE:** Establish and maintain a strong compliance/enforcement presence in the regulated community.

**MEASURE:** Inspections for Significant Activities. Specify the cumulative number of State inspections, including inspections at Federal Facilities, aggregated from the following categories identified on EPA form 57003H and the number of EPA inspections (Region 8 only) aggregated from comparable categories:

- a. Agricultural use
- b. Agricultural followup
- c. Nonagricultural use
  - d. Nonagricultural followup
  - e. Restricted use pesticide dealers
- f. Producer Establishments
- g. Exports

Note: All Federal data will be reported in real time. State data will be lagged one quarter.

**OECA Number:** PINSI (Cross-Reference to STARS Code: P/E2)

**TARGETED:** Yes

**REPORTED:** Q2,4

**PROGRAM AREA: Toxic Substances Enforcement**

**GOAL:** Attain and sustain compliance by maintaining an enforcement presence in the regulated community, identifying noncompliance in a risk based manner and taking effective enforcement actions in an impartial and consistent manner.

**OBJECTIVE:** Establish and maintain a strong compliance/enforcement presence in the regulated community.

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**MEASURE:** State & Federal Inspections Conducted Under TSCA. Separately specify, on a cumulative basis, the number of TSCA inspections conducted by EPA and State inspectors. Inspections conducted at Federal facilities are included in the above data.

**OECA Number:** TINS1 (Cross-Reference to STARS Code: T/E)

**TARGETED:** Yes

**REPORTED:** Q2,4

**PROGRAM AREA: EPCRA Enforcement**

**GOAL:** Attain and sustain compliance by maintaining an enforcement presence in the regulated community, identifying noncompliance in a risk based manner and taking effective enforcement actions in an impartial and consistent manner.

**OBJECTIVE:** Establish and maintain a strong compliance/enforcement presence in the regulated community.

**MEASURE:** Report on attached form:

- a. EPCRA 313 Non-Reporter Inspections
- b. EPCRA 313 Data Quality Inspections
- c. EPCRA 304 and CERCLA 103 Inspections
- d. EPCRA 311/312 Inspections

**OECA Number:** EINS1 (Cross-Reference to STARS Code: E/E and new)

**TARGETED:** Yes

**REPORTED:** Q2,4

**Inspections: Definitions**

**PROGRAM AREA: Multimedia Enforcement**

**OECA Number: MINSI (Cross-Reference to STARS Code: E/8)**

- a. A consolidated inspection occurs when a single inspection covers two or more programs. A consolidated inspection might be conducted by one fully trained inspector. Single program inspections using a multimedia checklist should not be credited. Report, for each program, the number of that program's inspections which were completed as part of one of the consolidated multi-media inspections counted in this measure.
- b. To count as a "coordinated" inspection or action, no more than three months may have elapsed between inspection by one program and subsequent inspection by another program. The coordinated inspection must be a result of prior collaboration and planning between programs. Provide, for each program, the number of that program's inspections which were completed as part of one of the coordinated multimedia inspections counted in this measure.

**PROGRAM AREA: RCRA**

**OECA Number: RINSI (Cross-Reference to STARS Code: R/6a, R/E-6b, R/E-6c, R/E-6d)**

- a. This measure reports, yearto-date, the number of LDFs including operating, permitted or closing land disposal facilities (except Underground Injection Control [UIC] facilities) inspected in FY '96. This would include Federal/State/Local/ Commercial LDFs as identified under §3007 (c), (d) and (e) of the Solid Waste Disposal Act. Inspection to be counted are Compliance Evaluation Inspections (CEIs).
- b. This measure reports, yearto-date, the number of TSFs including operating or permitted treatment and storage facilities inspected in FY '96. this would include Federal/State/Local/Commercial TSFs as identified under §3007 (c), (d) and (e) of the Solid Waste Disposal Act. Inspections to be counted are Compliance Evaluation Inspections (CEIs).
- c. This measure reports, yearto-date, the number of Generators, LQGs and SQGs, inspected in FY '96. Inspections to be counted are Compliance Evaluation Inspections (CEIs).
- d. This measure reports, yearto-date, the number of Transporters inspectedn FY '96. Inspections to be counted are Compliance Evaluation Inspections (CEIs).

**PROGRAM AREA: Air (Stationary)**

**OECA Number: AINSI (Cross-Reference to STARS Code: A/E, A/E-3, A/E-5, A/E-9, A/E-12)**

**Air - Minimally Acceptable Inspection (Level II Inspection)** A minimally acceptable State or local compliance inspection is an onsite visit to the operating source to assess compliance with at least applicable Federal air pollution control requirements. At a minimum, a compliance inspection must be performed for all Federally regulated air pollutants emitted by the source. Also, a source that is regulated for visible emissions must be evaluated using an acceptable reference method. Where a source is Federally regulated for more than opacity, a compliance inspection involving only a visible emissions observation is not generally considered to be a minimally acceptable compliance inspection.

As part of the source compliance inspection, an inspector must record the process operating conditions and, if appropriate, the control device conditions to determine if any significant change has occurred since the last inspection, or any process or control operation outside normal or permitted conditions has occurred. It is expected that minimally acceptable compliance inspections would also include at least an operations log check of process and control equipment including continuous emission monitoring systems logs. It should be noted that these requirements for a minimally acceptable inspection do not require the direct measure of operating conditions by the inspector.

**PROGRAM AREA: Wastewater**



**OECA Number: WINSI (Cross-Reference to STARS Code: WQ/H0)**

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

Our goal is for Regions to ensure that inspections conducted during the inspection year (July 1, 1995 through June 30, 1996) provide 100% coverage of all major NPDES permittees and those POTWs with approved pretreatment programs. As we negotiate the MOA, we will provide flexibility to shift inspection commitments to address new inspection approaches and targeting plans, for example where Regions are proposing to address minors based on the watershed or sector based consolidated approaches. Regions proposing less than 100% coverage should provide information within the MOA which details their inspection strategy and provides semi-annual commitments in lieu of 100% coverage based on the new approaches. These proposed commitments will be discussed and negotiations completed through the MOA.

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

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

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

Proposed Regional NPDES inspection commitments should be provided within the Memorandum of Agreement between the Region and OECA. The chart in Attachment VI provides the format for providing commitment information. Regions should provide the universe of majors and pretreatment POTWs along with ~~semi~~annual commitment targets. The universe of permittees to be inspected consists of either those permittees designated as "majors" within the Permit Compliance System (PCS) or POTWs with approved pretreatment programs, also designated within PCS. Regions should use the chart for ~~semi~~annual reporting and provide the number of inspections conducted against targets and a separate count of the number of sludge inspections conducted (a target has not be established for sludge inspections; this is a "report~~only~~" requirement).

Regions are encouraged to continue CSI inspections of POTWs where appropriate. Industrial user inspections done in conjunction with audits or PCIs or those done independent of POTW inspections will be counted as IU inspections. Tracking of inspections will be done at Headquarters based on retrievals from the Permit Compliance System (PCS) according to the following schedule:

<u>INSPECTIONS</u>	<u>RETRIEVAL DATE</u>
	The First working day after the second update in:
July 1, 1995 through Sep. 30, 1995	Jan. 1996
July 1, 1995 through Dec. 31, 1995	April 1996
July 1, 1995 through March 31, 1996	July 1996
July 1, 1995 through June 30, 1996	Oct. 1996

For further information on this measure, contact either Dave Lyons (564-7009) or Gary Polvi (564-7056) for NPDES inspections and Mimi Guernica (564-7048) or Doug Jamieson (564-7041) for pretreatment inspections.

## **Section VI**

### **Measures and Definitions:**

#### **Federal Facilities Enforcement Measures**

**(PLEASE NOTE: Additional measures and definitions under development; to be distributed under separate cover in June 1995)**

**PROGRAM AREA: Federal Facilities Enforcement**

**GOAL:** Manage multi-media compliance and enforcement activities at Federal facilities.

**OBJECTIVE:** Ensure that multimedia approaches to compliance and enforcement are being taken at Federal facilities in all regions and follow-up multi-media enforcement actions are being taken in appropriate circumstances.

**MEASURE:** For multi-media activities, target specific Federal facilities and report:

- Number of multimedia inspections conducted and related enforcement actions (formal and informal) taken at both Civilian Federal Agencies (CFA) and DOD/DOE facilities.

**OECA Number: FFA01**

**TARGETED: Yes**

**REPORTED: Q2,4**

**GOAL:** Monitor and improve compliance with hazardous waste management laws and requirements at Federal facilities.

**OBJECTIVE:** Ensure that all Federal RCRA Treatment, Storage or Disposal (TSD) facilities are inspected annually by EPA or states as required by the Compliance Act. Federal Facilities

**MEASURE:** For Federal TSD facilities, target required facilities and report:

- Number of EPA/state inspections conducted at Federal RCRA TSD facilities.

**OECA NUMBER: FFA02**

**TARGETED: Yes**

**REPORTED: Q1,2,3,4**

Note: Federal Facilities Enforcement Office (FFEO) is examining the feasibility of incorporating the above measures with other program measures as opposed to organizing these measures separately as Federal Facilities Enforcement Measures.

## REPORTING FORMS FOR COMMITMENTS

-- NPDES/PRETREATMENT

-- DRINKING WATER SNC

-- RCRA

-- TOXICS

-- EPCRA

### NPDES/Pretreatment Inspections

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

Our goal is for Regions to ensure that inspections conducted during the inspection year (July 1, 1995 through June 30, 1996) provide 100% coverage of all major NPDES permittees and those POTWs with approved pretreatment programs. As we negotiate the MOA, we will provide flexibility to shift inspection commitments to address new inspection approaches and targeting plans, for example where Regions are proposing to address minors based on the watershed or sector based consolidated approaches. Regions proposing less than 100% coverage should provide information within the MOA which details their inspection strategy and provides semi-annual commitments in lieu of 100% coverage based on the new approaches. These proposed commitments will be discussed and negotiations completed through the MOA.

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

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

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

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

For further information on this measure, contact either Dave Lyons (564-7009) or Gary Polvi (564-7056) for NPDES inspections and Mimi Guernica (564-7048) or Doug Jamieson (564-7041) for pretreatment inspections.

**FY 96 NPDES AND PRETREATMENT INSPECTION COMMITMENTS**

NPDES Majors Inspections

Region	Universe* of Majors	Commit. # (%)	
		<u>2nd Q</u>	<u>4th Q</u>

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

Pretreatment Inspections

Region	Universe of Approved Programs	Commit. Audits & Insp.				Coverage Total = # (%)
		<u>2nd Q</u>		<u>4th Q</u>		
		A	I	A	I	

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



**DRINKING WATER FIXED BASE SNC/EXCEPTIONS COMMITMENTS**

This measure requires Regions to negotiate targets with each State for the number of SNCs and exceptions off a fixed base which will be appropriately addressed or returned to compliance by June 1996. The process for establishing commitments for this measure is the same as in FY 95.

This list of systems will be provided by early July. Regions should submit their proposed commitments with the draft MOA by mid-August. These proposed commitments will be the subject of discussion during the MOA negotiation. Final commitments will be incorporated in the signed MOA by the end of September or early October.

Using the list, Regions are to negotiate targets with each State for the number of systems that will be appropriately addressed (either by State or Federal action) or returned to compliance by June 22, 1996. Separate targets should be negotiated for the Surface Water Treatment Rule, microbiological/turbidity, and for chemical/radiological SNCs and exceptions. In general, if a State has a relatively small number of SNCs/exceptions, we expect the State/Region to commit to address 100% of the systems. If the Region cannot commit to address 100%, an explanation of which systems will not be addressed and why must be provided along with your proposed commitments. Please remember that in order to be counted towards the commitment, the enforcement action must be taken or the return to compliance must occur by June 1996. Note that as in prior years, actions taken in the fourth quarter of FY 95 also count towards your commitments.

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

**RCRA REGIONAL AND STATE PROJECTED COMPLIANCE MONITORING ACTIVITIES****A. Inspection Projections**

*The following inspection information is being requested on a trial basis for FY 96. Please submit the table with Regional and State inspection projections for FY 96. At the end of the year, you will be requested to submit a completed chart for the Region, as well as for each State, showing where inspections were conducted during the fiscal year. Separate State tables are being requested at the end of the year to accommodate State-specific priorities or initiatives. If this approach meets Headquarters, Regional and State needs, it may replace the RCRA inspection measures in RECAPS.*

- For the Region and States, indicate the number of facilities where compliance monitoring activities are *projected* to occur in the fiscal year. Compliance monitoring activities are defined as ALL activities under RCRIS evaluation values, not just CEIs, CMEs, and O&Ms.
- The Regions and States may disinvest from statutorily mandated inspections if greater environmental benefits can be justified by investing these resources in national enforcement priority activities. (See **B. Statutorily Mandated Inspections** below)
- If RCRA inspections are projected for a priority but the facility-types are not known at this time, indicate the number of RCRA inspections projected in the last column.
- To avoid double counting between priorities, use this hierarchy to count compliance monitoring activities once, e.g. an inspection planned at a LDF within a sector which also is located in a priority community, credit one activity under LDF to the Community-Based priority.

1. Community-based
2. Sector
3. Media-specific

- To avoid double counting of facilities, use this hierarchy to count compliance monitoring activities once, e.g. an inspection planned for a LDF with an incinerator, credit one activity to the Incinerator column.

1. Federal Facility
2. Incinerators
3. Boilers and Industrial Furnaces
4. LDFs
5. TSFs
6. Generators
7. Non-notifiers
8. Transporters

Facility Type	Federal Facility	Incinerators	BIFs	LDFs	TSFs (non-combustion)	Generators	Non-Notifiers	Transporters	# of RCRA inspections projected for the priority but unknown facility type
Priority									
<b>Community-based</b>									
(e.g. list specific places)									
<b>Sectors</b>									
(e.g. list specific sectors)									
<b>Other priorities</b>									
(e.g. specific media, regional, or state priority)									

## B. Statutorily Mandated Inspections

In light of the responsibility and accountability for meeting the statutory obligations, the Regions must describe any divestment from a statutorily required activity. The Region must then describe specifically where those divested resources are to be reinvested and explain why this reinvestment provides greater environmental benefit. The Regions must take into account the special factors<sup>1</sup> for justifying disinvestments from statutorily mandated inspections at federal facilities. Below are the inspections mandated by the statute:

- Federal facilities identified under the Solid Waste Disposal Act at section 3007 (c), and as incorporated by the Federal Facilities Compliance Act.
- State and local facilities identified under the Solid Waste Disposal Act at section 3007 (d).
- Treatment, storage and disposal facilities identified under the Solid Waste Disposal Act at section 3007(e).

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

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

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

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

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

**TSCA INSPECTION TARGETS:**

Please fill in projected numbers of each category in the chart below. Programs listed in below table are in order of priority. Regional resources should be tiered accordingly to address each of these programs, with New Chemicals and TSCA §§4,8,12, and 13 being the two priorities. Regional toxics resources should be applied first to these national priorities to ensure that they are carried out to the maximum extent practicable, given resources and Regional priorities. However, if the Region chooses to disinvest from any of these priority programs, they must provide a strong justification as to why they are disinvesting and where those resources will be reinvested. For example, if the Region is disinvesting from New Chemicals but they are reinvesting their resources into compliance assistance activities, they should indicate that to us in the MOA. Flexibility will be allowed to determine the number of inspections per program.

**PRIORITY ENFORCEMENT AND COMPLIANCE ACTIVITIES UNDER FY 96 MOA**

PROGRAM/REGION	1	2	3	4	5	6	7	8	9	10	TOTAL
New Chemicals											
TSCA §§4,8,12, 13											
PCBs											
Asbestos											
TOTAL TSCA Enforcement Inspections											

PRIORITY ENFORCEMENT AND COMPLIANCE EPCRA ACTIVITIES

PROGRAM/REGION	1	2	3	4	5	6	7	8	9	10	TOTAL
EPCRA §313 non-reporter Inspections											
EPCRA §313 Data Quality Inspections											
EPCRA §304 CERCLA §103 Inspections											
EPCRA §311/312 Inspections											
Total EPCRA Inspections											

Please fill in projected numbers of each category in the chart above.

Please note: If a Region conducts a combined EPCRA inspection, for example a joint 313/304 inspection, then it should be counted as 1 inspection. However, the Region should footnote the sections of EPCRA that the joint inspection covered.



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## MEASURING THE SUCCESS OF ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAMS

EPA's Office of Enforcement and Compliance Assurance (OECA) needs to work closely with EPA Regions, States and localities to identify and evaluate the effectiveness of compliance assistance programs. OECA is placing increased emphasis on developing and implementing measures of success that focus on outcomes such as, environmental and compliance improvements. While we have measures which track traditional enforcement outputs, we need your assistance in developing the compliance assistance report. These compliance assistance measures will enable Regions and States to demonstrate the value of these programs in bringing about environmental improvements.

The measures described below are those that OECA deems of greatest importance in measuring program effectiveness. This list was developed by an OECA-led workgroup that included EPA media programs, regional representatives and States. The workgroup reviewed measures of success being used by different types of compliance assistance programs in several States and localities, some single media and some multi-media, some focusing on pollution prevention, others focusing on permitting newly regulated sources of air pollution. We anticipate that since these are new measures, we may revise them after Regions and States have experiences using them.

These measures are applicable to all types of compliance assistance activities such as workshops, hotlines and outreach materials, on-site visits as well as "sector-based" initiatives where a program works with an entire industry sector through a compliance assistance campaign.

The workgroup focused its review of programs on those programs that work with small businesses; however, if States and Regions are focusing compliance assistance activities on large business, municipalities or other populations, and would like to report on the effectiveness of these activities, we invite them to do so.

OECA is asking the Regions to use these measures to evaluate the effectiveness of their compliance assistance activities, especially those undertaken for priority sectors. OECA recognizes that many compliance assistance activities are operating at State and local levels through programs that are not directly funded by EPA and therefore is asking these programs to **voluntarily** provide information on the results of their compliance assistance activities. We encourage State and local programs to volunteer this information because measuring the success of compliance assistance is critical if we want to learn how, as a tool, it can bring about improved environmental performance and behavioral change, and effectively supplement the more traditional enforcement tools. We recognize that not all States currently have the

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ability to respond to all of the measures; however, we ask you to encourage them to begin collecting the necessary information so that they can answer them all.

Given that OECA is striving towards measuring the progress of industry sectors, we suggest that the data be collected in terms of whole facilities, where possible, and organized by industry or population type.

In addition to the measures listed below, OECA is also interested in learning about common compliance problems so that we can better target out national compliance assistance efforts.

#### MEASURES:

##### Measures for all Compliance Assistance Programs at State and EPA Regional Level:

##### 1. Improved Understanding and Awareness of Regulatory Requirements, Behavioral Changes, and Environmental Improvements:

Example indicators include: number of entities that are satisfied with the assistance they have received; number of compliance or environmental improvements made such as the number of applicable regulatory requirements<sup>8</sup> (State and Federal) that sources now comply with (e.g. # of sources that notified agency of their existence through an ID# or notification report, # that applied for a permit). This measure can also include the number of sources brought beyond compliance or below permit applicability levels through the adoption of pollution prevention or other measures.

Example: Region Q held a workshop on air permitting for 40 dry cleaners, after which 20 of those attending applied for a permit. Alternatively, State X went on-site to 20 metal finishers, of which 10 applied for a permit, and 5 were brought below permit applicability levels by adopting pollution prevention measures.

2. **Program Utilization:** What is the total number and percentage of population served by type of population (e.g. industry sector, type of public entity)?

Example: There are 6,000 dry cleaners in State Y. Of those, 500 attended a series of six workshops and 100 received on-site assistance.

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<sup>1</sup> For on-site compliance assistance, this refers to those regulatory requirements that were *identified* during the on-site visit. For general compliance assistance, this refers to the regulatory requirement(s) that was the *focus* of the assistance (e.g. how to fill out an air permit).

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## Measures for Regional and State Compliance Assistance Initiatives<sup>9</sup>:

1. **Improvements in Compliance Rates:** What has been the overall improvement in compliance rates for the populations served by your program?<sup>10</sup> How are you defining compliance?<sup>11</sup> What regulations, media are the focus of the initiative.

Example: State X conducts a compliance assistance "sweep" at all photo finishers in the State. State X first does a compliance rate assessment (through a non-inspection on-site evaluation at a random sample of facilities) and finds that only 10% of those visited were in full compliance with all the applicable State and Federal regulations. After conducting a compliance assistance "blitz campaign" State X goes back to a random sample of facilities and finds that 70% of those visited are now in full compliance.

2. **Environmental Results:** Amount of reduction in pollutant emissions, discharge loadings, and improperly managed substances.

Example: State X conducts on-site visits at small quantity generators and asks facilities to submit info on changes made, finding: 100 gallons of solvent waste no longer being generated; 26 gallons of waste ink no longer going to landfills; 95 gallons of silver contaminated wastes no longer going into the sewer; 100 gallons of soapy wash water with oil no longer going into storm drains & septic tanks; and 50 gallons of solvents no longer going into the air.

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<sup>9</sup> Initiatives refer to targeted compliance assistance activities that focus on particular industry-sectors or populations, the purpose of which is to look for overall improvements in compliance rates after a compliance assistance campaign.

<sup>10</sup> This type of analysis necessitates a baseline assessment prior to conducting a compliance assistance campaign. Baseline assessments are often conducted by selecting a random sample of facilities and assessing their compliance rate through a non-inspection assessment visit (e.g. State of Massachusetts's Printing Project) or if the industries have been inspected, by using state or EPA compliance rate data (e.g. State of Oklahoma Metal Foundries project).

<sup>11</sup> For information on noncompliance, EPA relies on our program databases (e.g. RCRIS, PCS, AIRS). Since many of the smaller sources that you will be working with are not covered in these databases you will need to use other sources of information such as Dun and Bradstreet, Census of Manufacturers through the Department of Commerce's Census Bureau. CD-ROM software packages that cover yellow-page listing that can be searched by SIC code also available. Contact EPA's Small Business Ombudsman's Office at 1-800-368-5888 for more information.

**SUGGESTED DATA COLLECTION METHODS:**

OECA understands that Regions and States are currently using various data collection methods to evaluate the results of their compliance assistance programs. These include: on-site evaluation forms; follow-up surveys, phone calls and visits; and self-certification. OECA anticipates that States and Regions will pick the most appropriate data collection method that best fits their needs. Below is a sample list of types of methods as they relate to the type of compliance assistance activity.

Activity	Sample Data Collection Methods
"General Compliance Assistance" (e.g. workshops, outreach materials, hotlines)	on-site evaluation form; follow-up phone calls; follow-up surveys
"Facility-Specific Compliance Assistance"(e.g. on-site visits)	follow-up phone calls; follow-up survey; follow-up visit; review of permit databases; self-certification.
"Sector-Based Compliance Assistance Initiatives" (e.g. industry "sweeps")	Pre and Post Test Compliance Rate Comparison

For those States that offer a "correction period", we are suggesting that at a minimum they revisit 20% of their facilities, especially those that they deem to have the worst compliance problems.<sup>12</sup> For States that are conducting an industry-wide compliance assistance campaign at all facilities within a given sector, then a revisit to 7% of facilities and/or a pre/post test compliance rate evaluation is adequate. Alternatively, we encourage States to propose a self-certification program, whereby the facility served would self-certify that it has made the required changes. In this case, we ask that States revisit a random sample of sites to verify the validity of the self-certification program.

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<sup>12</sup> If the only identified problem at a facility is the lack of a permit and this can be tracked by examining state or regional databases then a revisit is not necessary.

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**REPORTING METHODS:**

OECA reviewed the feasibility of using our existing media compliance and enforcement databases for reporting on compliance assistance activities and found that very few programs required information on small business "minor" sources, who are often the focus of compliance assistance activities. However, in cases where States are using these databases, they are encouraged to continue to do so.<sup>13</sup> Based on paper reporting results for FY96, EPA will explore the feasibility and practicality of developing new fields for additional direct database reporting for FY97.

OECA is asking the Regions to report on their activities through the existing MOA reporting process. We are asking the Regional Enforcement Coordinators to take the lead responsibility for assisting in the collection of Regional and State data, except for the CAA Sec 507 programs which will be using an existing Annual Reporting Form to report this information directly to EPA's Small Business Ombudsman Office. To facilitate the collection of State reporting from programs other than the 507 programs, we have attached a sample form, with and without sample answers, that can be used for data collection.<sup>14</sup> You can use this form for Regional reporting, as well.

**NOTE: THESE MEASURES ARE EXPRESSED AS A SINGLE MEASURE IN THE RECAP AND CAN BE FOUND AS MEASURE COMP-1, SECTION I.**

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<sup>13</sup> For example, RCRA programs have the option of using the existing RCRIIS CM & E database using code OTH for tracking compliance assistance activities.

<sup>14</sup> Approval for use of this form is pending OMB clearance.

**COMPLIANCE ASSISTANCE MEASUREMENT REPORTING FORM**

Measures for General Compliance Assistance Activities:

**General Description of Compliance Assistance Activities Offered to an Industry or Population Sector:**

MEASURE	RESULT	DATA COLLECTION METHOD
1a. Number of entities (public and private) within the industry sector or community? <sup>15</sup>		
b. Number of these entities receiving on-site compliance assistance.		
c. Number of these entities receiving other than on-site compliance assistance.		
2. Improvements in understanding/ awareness of compliance requirements, behavioral changes, and environmental improvements. <sup>16</sup>		

Additional Measures for Regional and State Compliance Assistance Initiatives<sup>17</sup>

<sup>15</sup> *Helpful sources to determine the number of industries by type of industry in your state include: Dun & Bradstreet, Census of Manufacturers through the Department of Commerce's Census Bureau. CD-ROM software packages that cover yellow-page listing that can be searched by SIC code are also available. Contact EPA's Small Business Ombudsman's office at 1-800-368-5888 for more information.*

<sup>16</sup> *Example indicators include: 1) number of entities that are satisfied with the compliance assistance they have received; 2) number of entities that have notified the agency of their existence (e.g., through an ID number or notification report); 3) number of entities that have applied for a permit; 4) number of entities brought below permit applicability threshold through pollution prevention or other methods.*

General Description of Compliance Assistance Initiative, including media and statutes covered

MEASURE	RESULT	DATA COLLECTION METHOD
3. Number of entities in compliance with Federal and State regulatory requirements or % improvement in compliance rates. <sup>18</sup>		
4. Amount of reduction in pollutant emissions, discharge loadings, and improperly managed substances.		

<sup>17</sup> *Initiatives is defined as compliance assistance activities that are focused at entire industry or other sectors, where the aim is to assess overall improvements in compliance rates as a result of a compliance assistance campaign. Examples include the Massachusetts "Assuring Environmental Compliance in the Printing Industry" Project and The Oklahoma Targeted Outreach Project with Foundries and Metal Finishers.*

<sup>18</sup> *This measure assumes that programs have developed baseline data on the overall rate of compliance with regulatory requirements prior to conducting the initiative. Compliance improvements will be measured against this baseline.*

**SAMPLE COMPLIANCE ASSISTANCE MEASUREMENT REPORTING FORM**

Measures for General Compliance Assistance Activities:

**General Description of Compliance Assistance Activity Offered to an Industry or Other Sector:**

Workshops, mailings, some on-site visits.

MEASURE	RESULT	DATA COLLECTION METHOD
1a. Number of entities (public and private) within the industry sector or community?	3000 dry cleaners	Census of Manufacturers
b. Number of these entities receiving on-site compliance assistance.	100	internal tracking
c. Number of these entities receiving other than on-site compliance assistance.	400	internal tracking
2. Improvements in understanding/ awareness of compliance requirements, behavioral changes, and environmental improvements (if tracked).	75 of the dry cleaners visited applied for a permit; 10 were brought below permit applicability levels by adopting p2 measures; 40 gallons less PERC used.	Reviewed permit files; site visits.



Additional Measures for Regional and State Compliance Assistance Initiatives

**General Description of Compliance Assistance Initiative, including statutes and media covered:**

Conducted a compliance assistance campaign with all metal foundries in our Region. The campaign included educational workshops explaining regulatory requirements, and on-site visits. Inspections were halted for a 6-month period.

MEASURE	RESPONSE	DATA COLLECTION METHOD
3. Number of entities in compliance with Federal and State regulatory requirements or % improvement in compliance rates.	Of the 70 metal foundries in our Region, 30% were in full compliance prior to undertaking the campaign, afterwards 50% were in full compliance.	Baseline compliance rate established from inspection records. Random inspections of facilities after the campaign was concluded.
4. Amount of reduction in pollutant emissions, discharge loadings, and improperly managed substances.	200 gallons of wastewater no longer generated; 50 gallons of solvents no longer going into the air.	Follow-up survey.

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## GUIDANCE FOR FY 1996/FY 1997 PESTICIDE ENFORCEMENT COOPERATIVE AGREEMENT WORK PLANS

Guidance for developing cooperative agreement work plans for pesticide program development and compliance/enforcement activities for FY 1996 is provided in this section. Regions and applicants should negotiate cooperative agreements that address the national priorities as appropriate for each applicant, as well as specific Regional and State/territorial/tribal priorities.

National priorities are identified in The FY 96/97 OECA Memorandum of Agreement (MOA). Refer to Section IV.3. of the MOA for a list of the pesticides and toxics programs national priorities and to Sections IV.1. and IV.2. for community-based and sector priorities. All of these priorities should be considered when negotiating cooperative agreements. Activities to support these priorities are described within this document. Commitment by applicants to conduct the specified activities described below should be explicitly stated in their work plans.

Additionally, Regions should refer to the Final FY 1995 Pesticide Cooperative Agreement Guidance dated April 26, 1994 for supplemental information to be used for developing cooperative agreements. Specifically, the FY 95 Pesticide Guidance contains general compliance monitoring guidance (Section 4)<sup>19</sup>, information on reporting (Section 5), cooperative agreement authorization and administrative requirements (Section 6) and reporting forms which appear in the appendices. We request that you continue to use these reporting forms.

### I. Work Activities to Support Pesticide Compliance/Enforcement Priorities

#### 1. Worker Protection Compliance and Enforcement Activities

Applicants should review the January 4, 1995 memorandum on Enforcement of FIFRA Agricultural Worker Protection Standard (WPS) -- Statement of Approach for summary guidance on the compliance and enforcement focus for WPS. Specific guidance on the priorities to consider in targeting worker protection inspections are also addressed in the Pesticide National Compliance Monitoring Strategy for the Agricultural WPS dated March 9, 1993. The Agency will maintain its emphasis on high risk, high exposure situations to ensure health protection for agricultural workers. OECA's Worker Protection Inspection Guidance Manual contains detailed guidance on the components of inspections.

Regarding the Agency's guidance on determining the appropriate recipients of WPS enforcement actions, there are two documents to note: the Summary Guidance on Issuance of WPS enforcement actions, dated February 13, 1995 and the March 30, 1995 guidance on Enforcement of Personal Protective Equipment (PPE) provisions of the FIFRA WPS.

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*1 Section 4 contains references to NEIC support for labs. This support is no longer offered since the NEIC laboratory support program has been discontinued and disbanded. Alternatives are under discussion.*

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Consistent with the aforementioned documents, applicants should incorporate into cooperative agreement workplans, the following compliance and enforcement activities:

Product Compliance: After April 21, 1994, all affected pesticide products distributed or sold by any registrant must be in compliance with PR Notices 93-7 and 93-11. State/Tribes must have a plan in place both for targeting compliance monitoring at establishments producing potentially high risk chemicals and for routine compliance inspections. Inspectors conducting inspections should collect evidence/documentary samples to allow for the verification of whether or not the label is in compliance. The States should coordinate with EPA on both phase 1 (product labeling) and phase 2 of the national FIFRA WPS Initiative; this initiative is being coordinated by an EPA/State workgroup led by the Office of Regulatory Enforcement.

Use Inspections: After January 1, 1995, users are required to comply with all the provisions of the WPS when using a product that references the WPS. The Agency recommends emphasis on high risk, high exposure situations to ensure health protection for agricultural workers. The Agency recently completed final action on five areas of concern that were identified in relation to the revised FIFRA Worker Protection Standard. EPA recommends that these five areas not be a current priority for targeting for enforcement actions (See the January 4, 1995 memorandum from Jesse Baskerville, Director, Toxics and Pesticide Enforcement Division). The only exception would be where a violation presented significant risk or exposure. With regard to the five areas recently revised, outreach and compliance assistance on the final revisions should be a priority. The goal should be to ensure that the regulated community both understands the revisions and they comply with them. With regard to the other provisions of the WPS, inspection and enforcement activity should occur to assure compliance.

Tips and Complaints: WPS tips and complaints should be included in priority setting systems.

Continued Outreach/Compliance Assistance: States/tribes should continue with their WPS outreach/compliance assistance programs in addition to their enforcement program.

Reporting: Applicants need to specifically report on the progress of their WPS implementation strategies and other worker protection compliance and enforcement activities. Reporting methods used to document worker protection compliance monitoring activities are: 1) mid-year and end-of-year evaluation reports; and 2) semi-annual accomplishments reports. In States where EPA is managing the pesticide compliance program (e.g., Wyoming), a similar report on WPS activities should be prepared.

Note: Any amendments to the State's WPS Implementation Plan should be attached to their plan or alternatively, the Cooperative Agreement may be cited.

Training: Using funds received for worker protection enforcement, applicants should send appropriate personnel to available EPA-sponsored training sessions related to the Worker Protection Rule. The number and type of personnel to be sent should be discussed with the Region. If the applicant needs to supplement federal training with their own training, the development of this training should be coordinated and discussed with the Region. The Worker Protection Inspection Guidance Manual, and other training materials developed by EPA are available to guide Regional, State,

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territorial, and tribal enforcement personnel. Managers should support travel of applicants to attend any EPA-sponsored worker protection inspection training.

## 2. High Risk Compliance and Enforcement Activities

**2a. Disinfectant Efficacy Testing Activities:** The Agency has initiated efficacy testing of disinfectant products. This testing program is the result of concern over products making misleading label claims for various levels of disinfectant properties. EPA Headquarters will be working with the States, through the Regional Offices, requesting that specific States assist in product sample collection and analysis activities.

**2b. Child Resistant Packaging:** Applicants should include a commitment to encourage compliance with or seek enforcement of Child Resistant Packaging requirements in their pesticides initiatives. These inspections can be part of the routine inspection programs. As necessary, make referrals to EPA for follow up.

**2c. Unregistered Pesticides:** Applicants should screen high risk unregistered pesticides from those pesticides which are at the lower end of the risk spectrum, conduct inspections which address high risk pesticides which are not registered (as part of routine or other inspections), and refer inspection reports as appropriate to the EPA regional office. In FY 95 or early FY 96, in order to help the States/Regions in addressing this activity, OECA, in coordination with the Office of Pesticide Programs, expects to issue guidance on risk as it relates to unregistered pesticides.

## II. Work Activities to Support the Core Pesticide Compliance and Enforcement Program

The applicant should indicate that the following will be commitments in their work plans:

**1. Producer Establishment Inspections (PEIs):** PEI inspections should be targeted with the intention of conducting inspections at all producing establishments within their jurisdiction over an extended period of time. Inspections should be on a routine cycle. Emphasis on PEIs focuses resources at the source of the product and therefore, assures product label changes have been incorporated and assures the integrity of the products.

**2. Misuse:** States should continue to address pesticide misuse particularly as it relates to high risk and food safety issues.

**3. Pesticides Infrastructure:** Cooperative agreement resources should be used to undertake the following activities to support infrastructure needs for the applicant's compliance enforcement program.

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a. Pesticides Inspector Training: Courses previously offered by the Office of Compliance Monitoring and now overseen by OECA's Agriculture and Ecosystem Division are: the Pesticides Worker Protection Train-the-Trainer Inspector Training Course; the Pesticide Product Enforcement Course; and the Pesticide Use Enforcement Course. With regard to the training courses, States/Tribes and Regions should incorporate participation in these courses into their work plans.

Because of our strong commitment to inspector training, we are asking States/Tribes to specifically identify personnel and set aside cooperative agreement funds to cover costs associated with EPA-sponsored training. Additional information on advanced technical and professional training will be provided to Regions/States as available.

b. Case Development Training: Regions should encourage State attendance at case development training courses, including those offered by the Toxics and Pesticides Enforcement Division, Office of Regulatory Enforcement.

c. Enhanced Database Development: Regions are asked to strengthen pesticides compliance program infrastructure through enhancement of database systems; two examples are the Incident Monitoring System and the Pesticide Field Data Plan. Regions should work with States wherever possible on this objective. FY 1996 enforcement funds may be used to develop or enhance systems for the collection and management of compliance/enforcement data.

**4. Ground Water Enforcement:** In FY 1996, applicants will continue to monitor compliance with and enforce labeling as part of their routine inspections. In targeting use inspections, applicants will take into account areas of high risk for groundwater contamination from pesticides, along with how these areas overlap with locations of pesticide use. The applicant should continue activities related to enforcement elements of the State's/Tribe's groundwater management plan, either a generic or pesticide-specific management plan.

Applicants should plan for, identify and describe their enforcement authorities, capabilities and activities, or reference these activities if already provided in the SMP, which will be used to ensure compliance with the provisions of their ground water management plan (or groundwater protection implementation plan); include a clear statement of the roles of different agencies if more than one agency within a State/Tribal land will potentially be involved with enforcement activities for protection of ground water from pesticide contamination. When developing either the generic or pesticide-specific management plan, applicants should consider the enforcement authorities available under other Federal/State/Tribal statutes, when it comes to contamination of ground water or drinking water supplies, and coordinate enforcement activities with EPA and other State/Tribal agencies to make full use of other statutes where appropriate.

#### **5. Compliance Assistance:**

a. State-specific compliance assistance activities: The applicant and Region should agree on the compliance assistance activities to be conducted. These activities may range from providing outreach materials to improve compliance, for example, in areas where requirements are new or violations are occurring due to a lack of understanding; to conducting seminars or public meetings with the regulated industry to explain requirements or answer questions; to conducting compliance

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assistance visits/workshops; to providing remedial training for violators; to developing programs reflecting EPA's policies on self audits, and compliance assistance inspections. When new EPA policies are issued, applicants are encouraged to reflect such policies within their programs as warranted.

b. EPA Agriculture Compliance Assistance Center: The Office of Compliance, OECA, is developing an Agriculture Compliance Assistance Center in Region 7. The Ag Center will help producers of agricultural commodities and their supporting businesses comply with all environmental requirements, prevent pollution before it occurs, and reduce costs associated with compliance by identifying flexible, common-sense ways to achieve compliance.

The primary purpose of the multi-media, sector-oriented Ag Center is to provide a base for "one stop shopping" for the agriculture sector - one place to provide information on EPA's environmental requirements affecting the agriculture sector, information that is environmentally protective and agriculturally sound. The Ag Center will provide information and technical support to State regulatory programs to assist them in meeting the compliance assistance needs of their regulated agricultural communities.

The Ag Center will utilize distribution mechanisms, such as USDA-Extension, State Lead Agencies, crop consultants, etc. The Ag Center plans, and has already begun, to enlist the active participation of representatives of the agricultural community including USDA, State Lead Agencies, trade associations and others providing information to the agricultural community. Active participation by representatives from all members of the agricultural community will help the Center produce the types and kinds of information needed.

States should include in their compliance programs a commitment to work through the Regions with the Center to identify information/compliance assistance needs and to help field test materials. States are encouraged to participate in the developmental stages of the center to assure their needs are being met.

**6. Pesticide Use Risk Reduction (PUR):** Regions have discretion in the allocation of PUR funds to States for enforcement-related activities. This program should be viewed as a use reduction program driven by risk considerations. Further, PUR holds great promise for attainment of pollution prevention goals. During FY 1996, States may be called on to assist EPA's efforts in this area by committing to one or more of the following activities: providing field data to support decision making, coordinating communication and actions with other State agencies having related regulatory authorities, conducting inspections, providing outreach to the public and regulated community, pursuing enforcement specifically directed at use/risk reduction as appropriate or achieving use/risk reduction through the use of SEPs in enforcement actions, as appropriate.

**7. Section 19(f) Enforcement Activities:** In accordance with FIFRA Section 19, a State or territory may not exercise primary enforcement responsibility under Section 26, or certify an applicator under Section 11, unless the Administrator determines that the State or territory is carrying out an adequate enforcement program to ensure compliance with Section 19(f). EPA issued a Policy Statement (58 FR 43994, Aug. 18, 1993), which provided the criteria that States must undertake in order for the

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Administrator to make an adequacy determination. To date, the Agency has announced interim determinations of adequacy for all States and territories, except the Palau Islands.

After the Section 19(f)(1) regulations are promulgated, the Agency will establish criteria for evaluating State programs under FIFRA Section 19(f)(2) to ensure that they in fact do have and continue to have adequate compliance programs for regulations promulgated under Section 19. The criteria and process for this will be published in the Federal Register for public comment after the regulations under Section 19(f)(1) are promulgated.

#### **8. Special Action Chemicals, Cancellations, Suspensions, Other Major Regulatory Actions and National High Risk Initiatives:**

Activities regarding special action chemicals will be identified by the Office of Enforcement and Compliance Assurance and issued to all Regions for communication to the States. This list will contain those chemicals for which OECA requires specific compliance monitoring and enforcement activities, as well as national reporting beyond the normal reporting cycle. The Region and applicant may wish to include use/risk reduction activities for pilot studies on special action chemicals.

Implementation of orders, National Compliance Strategies for previously canceled and suspended pesticide products and other major regulatory actions must be a part of every State enforcement program. States will conduct cancellation/suspension inspections and other compliance monitoring activities to assure compliance with major pesticide regulatory actions within the time frames specified in the nationally issued Compliance Monitoring Strategies. Inspections and other compliance monitoring activities for this priority area will address: a) major cancellation actions; b) all suspensions under FIFRA Section 6; c) FIFRA Section 3(c)(2)(B) suspensions; and d) other major pesticide regulatory actions (i.e. label improvement programs, etc.).

States may also be requested to participate in National initiatives to address specific risks identified by analysis of enforcement data during FY 96/97. OECA will work with Regions and States to develop and implement such initiatives.

It is understood that States/Tribes may renegotiate the outputs in the cooperative agreement upon receipt of requests to conduct activities in the above areas.

**9. Exports:** In FY 1996, the States should continue to conduct pesticide export inspections; the specific number will be negotiated with the Regions. (Export policy was issued in February, 1993.) The States and the Regions should be aware that a compliance monitoring strategy dealing with exports will be provided. These inspections are to be included in the routine inspection program for the most part.

**10. Imports:** States should conduct inspections at the ports of entry for imported pesticides, particularly including U.S. Customs-detained shipments that the Agency has been notified are potentially in violation of FIFRA.

**11. Section 18 Monitoring:** Under the Section 18 exemption clause both Federal and State agencies may be exempted from any provision under FIFRA by the Administrator if an emergency condition exists. Each cooperative agreement application work plan should reflect how the applicant plans to

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address monitoring and follow-up on Section 18 exemptions, especially suspected misuse violations. The number of Section 18 inspections should be negotiated between the region and the applicant.

12. **Section 6(g):** Through implementation of specific compliance strategies, States and Tribes in coordination with the Regions will help to enforce the information submittal requirements during their routine inspections. Applicants will consider the information they receive on quantities and locations of suspended or canceled pesticides, received either directly from the regulated community or from the Region, in targeting future inspections. Additionally, the Region may refer inspections to the States or Tribes, although the number that they may be asked to perform in support of the information submittal requirements is impossible to project and may require some adjustments to other projected inspection activities.

OECA plans to track information submitted by the regulated community, then send a report to each Regional Office indicating the quantity and location of canceled or suspended pesticides stored within the jurisdiction of that Region. Mechanisms for transmitting this information between the Regions and their States should also be described in the agreement.

13. **Pesticide Recalls:** EPA may also require registrants and distributors to recall pesticide products which have been both suspended and canceled. Once these recall requirements are effective, applicants will need to enforce where applicable. This applies only to pesticides suspended under Section 6. Once these requirements are effective, the applicants and Regional Offices should discuss the relative priority of the different activities being conducted under their enforcement cooperative agreement. Recommended procedures for recalls and disposal are found in 40 CFR part 165. For both section 6(g) and section 19, OECA will issue chemical specific national compliance monitoring strategies, which also address the suspensions/cancellations.

14. **Endangered Species Enforcement:** During the beginning of FY 96, the Agency will continue promoting the interim, voluntary Endangered Species Protection Program. Decisions to move the program into its final enforceable phase are pending reauthorization of the Endangered Species Act and subsequent administrative decisions.

Enforcement of the use limitations to be imposed to protect listed species will be carried out under the provisions of FIFRA addressing product cancellation, misbranding and misuse. Products whose use requires limitations to protect listed species and which do not carry the necessary information on the product labeling, may be identified through routine inspections of manufacturing facilities and pesticide distributors and dealers or through information received regarding suspected misbranding. Products found to be misbranded (i.e., do not carry the required label language to protect listed species) may be subject to enforcement action. In the field, pesticide misuse will be identified similarly through routine inspection and information provided regarding alleged misuse of a pesticide product. In targeting use inspections, applicants will take into account areas inhabited by endangered species, along with how these areas overlap with locations of pesticide use.

Once the final Endangered Species Protection Program is published by the Agency, the applicants will need to plan for and implement appropriate enforcement measures. The applicants



will need to comply with the national Compliance Monitoring Strategy for the Endangered Species Protection Program when issued.

### **III. Funding Allocations**

The total proposed President's budget for FY96 identifies \$16,133,600 for State pesticides enforcement. A separate memorandum detailing Regional allocations will be sent out in June, 1995.

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## GUIDANCE FOR 1996/1997 TOXICS ENFORCEMENT COOPERATIVE AGREEMENTS WORK PLANS

This national guidance should be used as the basis for negotiating TSCA enforcement cooperative agreements with the cooperative agreement applicants.

### I. Work Activities to Support Media Specific Priorities

1. **Lead-based paint:** TSCA Section 404(a) provides that any State which seeks to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 may submit an application to the Administrator for approval of such program. If the State certifies, at the time of submitting an application, that it meets the decision criteria for State approval, then it is deemed authorized by EPA until EPA withdraws the authorization. An authorized State's FY 1996 work plan must build on the development of the Lead Standard implementation activities. Successful implementation of the Lead Standards will depend heavily on available training materials and on developing a network to provide proper and adequate training to all parties affected. The Agency recognizes that some applicants may choose to develop their own training materials to meet their particular needs. EPA expects to have guidance on requirements for an adequate State enforcement program in early FY 1996. This guidance, in draft form, will be discussed with the Forum on State, Tribal Toxics Action (FOSTTA) in FY 1995.

2. **Asbestos Hazards:** States are asked to help reduce public exposure to asbestos hazards in indoor environments through compliance assistance, compliance monitoring and case development as applicable. States should focus their efforts in the following areas: AHERA (based on identified non-compliance and risk), the revised asbestos Model Accreditation Plan (MAP), and the current and revised asbestos Worker Protection Rule (expected to become final in FY 1997).

### II. Work Activities to Support Core Compliance and Enforcement Program

A. **PCBs:** As a minimum, each PCB compliance monitoring cooperative agreement work program should address each of the activities in (1) through (5) listed below.

(1) The State will develop and use, for FY 96, an updated NAIS, which includes a specific method or criteria for selecting FY 96 inspection targets and for priority-setting based on the identification of any serious environmental or human health risks from PCBs in the State and taking into account the Agency's revised PCB Compliance Monitoring Strategy. States are also asked to consider in their inspection targeting Environmental Justice (EJ) communities (as discussed in Executive Order 12898) as certain segments of the nation's population which are disproportionately burdened by pollutant exposure. Inspection schemes should include the follow-up to tips and complaints as a priority. The Regions should review the State's inspection scheme and ensure that it complies with the National PCB Compliance Monitoring Strategy.

The State and Region must ensure that inspection schemes and compliance assurance measures include federal facilities within the State as appropriate.

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The NAIS should be submitted to the Regional Office within the first month of the cooperative agreement project period, preferably with the application. This can be submitted as a separate document or as a distinct section of the application.

(2) In connection with the NAIS, the State should establish/update and maintain a logging system for tracking tips and complaints.

(3) A projection should be included for the number of PCB compliance inspections to be conducted each quarter. Related activities and milestones to be accomplished should be identified in narrative form with projected dates of accomplishment.

(4) States are encouraged to pursue innovative, appropriate approaches to achieve compliance/enforcement and phase out risks associated with PCBs in coordination with the EPA Regional Offices, which will be coordinating with ORE's Toxics and Pesticide Enforcement Division and the Office of Compliance.

(5) States that do not have their own enforcement capability for PCBs are encouraged to work with the Regional Office on case development activities.

**B. Asbestos Hazards:** States proposing to conduct inspections under the cooperative agreement should address items (1) through (7) in their work program.

(1) States should conduct coordinated asbestos compliance inspections, to the extent feasible, focusing on situations presenting the highest risk; that is, in the course of monitoring for compliance with AHERA and/or worker protection requirements, State inspectors should be able to identify violations of NESHAP requirements as well.

Coordinated inspections which result in the observation of violations of NESHAP and/or worker protection requirements should be referred to EPA and/or the appropriate delegated State NESHAP agency, as applicable.

States must develop and implement a Neutral Administrative Inspection Scheme (NAIS) or update their existing inspection scheme to assist in targeting FY 96 inspections of "other person" at Local Education Agencies (LEAs) for compliance with AHERA and to facilitate coordination of AHERA, NESHAP, the Model Accreditation Plans (MAP) and/or worker protection inspections. The updated NAIS should be submitted to the Regional Office within the first month of the cooperative agreement project period, or preferably with the application.

The NAIS must include, as a minimum, a specific method or criteria for selecting inspection targets and comply with EPA's National Compliance Monitoring Strategies. States should coordinate with the EPA Regional Office or the State delegated agency, as applicable.

States/tribes should give particular attention to the MAP because it is a new rule. Applicants should indicate that they are familiar with the requirements of the new MAP rule. States are also asked to consider in their targeting Environmental Justice (EJ) communities (as discussed in Executive Order

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12898) as certain segments of the nation's population which are disproportionately burdened by pollutant exposure.

(2) States, when at all possible, should coordinate with the designated State recipient of AHERA management plans to identify the universe of "other persons" that conduct asbestos AHERA related activities within their State. "Other persons" include any entity (contracted or otherwise hired) that is responsible for inspecting LEA's for asbestos-containing building material for AHERA inspection requirements.

(3) States must establish/update and maintain a logging system for tracking tips, complaints, and referrals from the NESHAP or MAP programs and the worker protection program. As appropriate, inspections in follow-up to tips, complaints, and referrals (for-cause inspections) must be targeted using a ranking mechanism.

Any installment of a new tracking system should follow discussions with the State and regional NESHAP programs to identify what programs are currently available and which may be adopted to suit the needs of the State's programs.

(4) States must include a projection for the number of asbestos compliance inspections. States may conduct coordinated asbestos inspections, under their cooperative agreement, in the following areas:

- Inspections of LEAs to monitor compliance with AHERA requirements and any additional State requirements regarding "response actions."
- Follow-up inspections to ensure that the conditions/requirements of settlement agreements are implemented.
- MAP inspections related to training course providers/abatement activities in public and commercial buildings.
- AHERA inspections in response to tips, complaints and referrals.
- EPA's Asbestos Worker Protection inspections. This applies only to those States which are subject to EPA's Asbestos Abatement Project's Rule found at CFR Part 763, Subpart G. The Worker Protection Rule is being updated.

(5) If up-to-date cross training has not been completed by the State's inspectors recently, the cross-training of inspectors should be conducted as feasible to facilitate coordinated asbestos compliance inspections. This would address, for example, instructions on the NESHAP requirements and proper use of the modified NESHAP checklist. Inspectors who intend to enter the active removal area during their coordinated asbestos inspections to conduct monitoring of NESHAP and AHERA requirements must first complete the appropriate, health and safety training. This extent of and mechanism for proposed cross training must be addressed in the proposed work program.

(6) States must comply with the EPA Compliance Monitoring Strategy which affects asbestos compliance monitoring activities conducted by the States during the project period.

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(7) In most cases, it is not expected that the inspector will need to take physical samples. The Inspection Protocol provides guidance for sample collection when it is necessary. Schools are required to inspect, sample, and analyze any asbestos containing material found in their buildings using accredited persons and accredited laboratories. However, if any samples are to be collected by the State, provisions should be included for the analysis of samples, by either an accredited State laboratory or a contract laboratory. Anticipated turn around times for analyses should be included.

(8) In addition to items 1 through 7 above, the following is encouraged: States that do not have their own enforcement capability for AHERA or MAP and currently do not have the experience/ability to complete case development activities, may develop, update or implement a case development program. This would include the actual drafting of notices of noncompliance, administrative civil complaints, and/or litigation reports for submittal to the Regional Office for signature, as appropriate.

**C. Reporting:** The Regions should work with the States, as they have in the past, to ensure that the appropriate forms are used for reporting cooperative agreement activities for asbestos and PCBs; in the past, these forms have generally been the FIFRA/TSCA Tracking System (FTTS) forms.

### III. Lead Enforcement Grants

FY95 was the first year for lead enforcement grants. The purpose of these grants is to assist States enhance the enforcement component of their lead program through capacity building and to prepare them for assuming program implementation. In FY95, EPA targeted enforcement cooperative agreements to those states closest to having a complete enforcement program. For FY96, funds should be directed to a limited number of new states (i.e., states which did not receive grant funding in FY95 for lead enforcement) that are closest to having a complete enforcement program.

### IV. Sector Grants

The FY96 President's budget proposes additional grant dollars to support new multi-media sector-based activities. These funds are to be allocated to States willing to develop and implement new approaches to compliance on a pilot basis. Documentation of the results of these pilot projects would be shared with other States in hopes that successful projects could be adopted by other States. OECA is in the initial stages of developing a draft proposal to share with the Regions regarding the use and selection criteria for these grants. Information outlining the process and proposed funding allocations will be transmitted shortly to the Regions under separate cover.

### V. Funding Allocations

The total proposed President's budget for FY96 identifies \$3,650,000 for State toxics enforcement and \$1,000,000 for lead enforcement. An additional \$1,836,000 has been requested in the President's budget for multi-media sector-based activities. A separate memorandum detailing Regional allocations for state toxics enforcement and lead enforcement will be sent out in June, 1995.

As indicated in Section IV., further information on multi-media sector-based grants will be forthcoming under separate cover.

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## FRAMEWORK FOR MOA SUBMISSION

This framework is for submission of Regional FY 96/FY 97 MOAs. The outline provided below represents an electronic file designed to assist Regions in formatting their MOAs. Refer to the MOA guidance for clarification of the information requested below. Please provide your MOA in the outline format as follows:

### I. Introduction

### II. Priorities

#### Community-Based

Priority:[Identify Community-Based Priorities and list each separately]

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

#### National Priority Sectors:

Priority:Petroleum Refining Sector

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Dry Cleaners

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Primary Nonferrous Metals

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

**Significant Sectors:**

Priority:[Select two of the significant sectors, identify and list separately]



Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Other Sectors:

Priority:[Separately identify and list "other" sectors selected]

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Media-Specific Priorities:

Priority:Water/Watershed Approach

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

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P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Water/Safe Drinking Water Act

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Water/Wetlands Protection

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Toxics and Pesticides/Protect Human Health

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Toxics and Pesticides/EPCRA

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:RCRA/New Regulations

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:RCRA/Outreach and Assistance

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:RCRA/Generators

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Air/Air Toxics

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Air/Operating Permits

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Air/Implementing New Enforcement Tools

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority:Superfund/Worst Sites First

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority: Superfund/Enforcement First/Cost Recovery

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

Priority: Superfund/Enforcement Fairness/Reduce Trans. Costs

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component:

Measuring Results:

Resource Tradeoffs:

Regional support needs:

### III. Criminal Enforcement and Federal Programs

Statement of Problem:

Activities/Tools to Address Problem:

EJ Component:

P2 Component: