

June 5, 1997

MEMORANDUM

SUBJECT: Final FY 98/99 OECA Memorandum of Agreement (MOA) Guidance

FROM: Steven A. Herman /s/
Assistant Administrator

TO: Regional Administrators

This memorandum provides you with the FY 98/99 OECA MOA Guidance. The MOA guidance articulates the national enforcement and compliance assurance program's most important goals, objectives, and priorities. While the primary purpose of this MOA guidance is to serve as a negotiated agreement between the Region and Headquarters addressing common, cross-cutting issues or concerns, we recognize that much of the implementation efforts involve both Regional and State activities. Therefore, Regions should use this guidance when discussing State agreements and workplans and, where appropriate, address implementation of national priorities which match State environmental problems, strategies and resources. We recognize, however, that States face unique situations and that flexibility is important to ensure their most significant environmental problems are addressed. It is in the MOAs or State agreements themselves that final decisions on priorities and directions must be made.

The final MOA guidance reflects discussions between Headquarters and Regions which began last summer and which resulted in development of the Draft MOA Guidance sent out for review and comment on February 21, 1997. We received comments on the draft guidance from all ten Regions, State offices within Regions 2, 4, 6 and 8, and numerous Headquarters offices. We have considered their comments in developing the final guidance.

When submitting your MOA, please provide a copy to John Neylan, Chief, Planning Branch, Enforcement Planning, Targeting and Data Division, Office of Compliance, mail code 2222-A. We also ask that you submit an electronic version in addition to the hard copies [Neylan.John @ epamail.epa.gov]. **We are expecting the submittal of your Regional MOA proposal by August 22, 1997.** We anticipate negotiations taking place during the late summer/early fall, and that all MOA's will be in place in October, 1997.

The FY 98/99 OECA MOA Guidance will be sent along with the FY 98/99 OECA MOA Consolidated Technical Guidance (CTG) to your staff under separate cover memorandum signed by Elaine Stanley, Director, Office of Compliance. The CTG provides your staff with additional supporting guidance designed to assist your Region in developing your MOA. A condensed response to comments document will also be included with the CTG which addresses OECA's changes to the draft guidance in response to major comments received.

We look forward to working with you and your staff over the next couple of months as you develop your Regional MOA. We recognize that we may need to reassess our priorities or refocus our direction based on new or changed Agency priorities at the midway point of this two year cycle. We will continue to involve you in discussions of any shifts, as you are a vital part of the Agency's enforcement and compliance program. I want to take this opportunity to thank you and your staff for your continued support and assistance.

Attachment

cc:

- Assistant Administrators
- Deputy Regional Administrators
- OECA Office Directors
- Regional Counsels
- Enforcement Coordinators
- Regional MOA Coordinators
- OECA MOA Workgroup
- Headquarters Media Program Contacts

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A detailed FY 98/99 OECA MOA Consolidated Technical Guidance is provided under separate cover.

FY 98/99 OECA MEMORANDUM OF AGREEMENT GUIDANCE

I. INTRODUCTION

The Office of Enforcement and Compliance Assurance (OECA) Memorandum of Agreement (MOA) is an agreement between Headquarters and each Region which outlines the enforcement and compliance assurance activities, priorities and programs that will be implemented to promote and achieve our program goals. The MOA guidance articulates the national enforcement and compliance assurance program vision of the most important goals, objectives, and priorities which OECA, the Regions, States, and its other partners (including tribes, local governments, and communities) should refer to in planning their annual activities. With the development of the draft National Enforcement and Compliance Assurance Strategic Plan, we have the ability for the first time to more directly link the biannual activities and priorities in the MOA guidance to the longer term goals and objectives of the strategic plan. Through this link, the MOAs will illustrate how short-term, annual operational activities support longer-term goals, in addition to serving as a springboard for responding to the Government Performance and Results Act (GPRA).

This guidance continues to place emphasis on a balanced enforcement and compliance program which addresses community-based, sector, and media priorities as inter-related and integral components of a successful and effective program. While the primary purpose of this MOA guidance is to serve as a negotiated agreement between the Region and Headquarters addressing common, cross-cutting issues or concerns, we recognize that much of the implementation efforts involve both Regional and State activities. Therefore, Regions should use this guidance when discussing State agreements and workplans and, where appropriate, address implementation of national priorities which match State environmental problems, strategies and resources. We recognize, however, that States face unique situations and that flexibility is important to ensure their most significant environmental problems are addressed. It is in the MOAs or State agreements themselves that final decisions on priorities and directions must be made.

II. LINK BETWEEN PLANNING AND ACCOUNTABILITY

The Government Performance and Results Act (GPRA) has accelerated Agency efforts to improve the link between planning, budgeting and accountability. GPRA requires all federal agencies to develop five year strategic plans and annual performance plans. As part of these plans, agencies must develop goals, objectives and sub-objectives to achieve these goals, strategies to accomplish objectives, and performance measures to assess progress. OECA is now developing their strategic plans, to support the Agency strategic plan required by October 1, 1997.

Work on the strategic plan for the National Enforcement and Compliance Assurance Program (NECAP) began in earnest last fall, the first effort to develop a long-term plan since the OECA and Regional office reorganizations took place over the past few years. The plan will be a working document, intended to articulate long-term directions and priorities and guide national program decisions on short term priorities, the use of resources, and monitoring results. The draft strategic plan is to be completed this spring and work undertaken to date on this plan has helped to frame the FY 98/99 MOA guidance and our FY 1999 budget development, as well as support Agency-wide planning, budgeting, and accountability efforts. The draft strategic plan will be circulated for stakeholder review and comments. Once complete, the plan will be revised periodically to accommodate the need for shifts in program direction.

The NECAP Strategic Plan will likely have its greatest direct impact in the areas of long-term planning, evaluation, and resource management. The six long-term goals are the heart of the NECAP Strategic Plan and are listed here:

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- Goal 1: Use enforcement tools to deter future violations, return violators to compliance, and to restore and remediate places.
- Goal 2: Promote responsible and voluntary action by the regulated community to meet or exceed environmental regulations and to restore and remediate places.
- Goal 3: Provide meaningful opportunities for public participation and ensure the public's right to know
- Goal 4: Use enforcement and compliance assurance authorities to deliver protection under Federal environmental laws to ensure that all populations, regardless of race, color, national origin, and income live in clean and sustainable communities.
- Goal 5: Maintain and enhance strong working relationships with Federal, Tribal, State, and Local governments and with other countries.
- Goal 6: Use the best science, data, and human and fiscal management (internal management) practices to achieve our mission.

The MOA and the budget will be the primary vehicles through which the NECAP's strategic direction is translated to annual operational priorities. The long-term vision for the national enforcement and compliance assurance program becomes the framework from which we set priorities, evaluate budget options, commit resources to implement our strategic plan, and meet our goals. Both the budget and the MOA submission are organized around program components to better connect budgeted activities to actual program commitments. In addition, negotiations and work undertaken as part of the MOAs will prove useful for evaluating and, when appropriate, for adjusting some of the long-term objectives and strategies outlined in the strategic plan.

An area of critical importance in establishing and evaluating the strategic plan and MOA priorities is in the area of improved measurement. Our internal efforts at producing improved measures have been augmented by GPRA's focus on moving EPA toward move outcome based measures. OECA is developing a National Performance Measures Strategy, the purpose of which is to develop and implement an enhanced set of performance measures for the enforcement and compliance assurance program. This strategy, which will be completed by October 1, 1997, will identify possible new measures through consultation with regulatory partners and interested stakeholders, and implementation of these new measures may extend beyond calendar year 1998. These measures would build upon improvements OECA has made over the last three years in gathering new types of information, such as through the use of the Case Conclusion Data Sheet (CCDS), and the implementation of a compliance assistance activity reporting measure. Under the auspices of the National Environmental Performance Partnership System (NEPPS), core program performance measures are being developed by each National Program Manager, including OECA, for the purposes of evaluating Performance Partnership Agreements with States beginning in FY 1998. We are working together with the Environmental Council of States (ECOS) to develop these core measures based on an agreed upon framework and definitions, and to ensure that they are compatible with the measures for GRPA. Our efforts to date, and continuing into the next several years, are to ensure that we moving toward greater use of outcome measures and environmental indicators.

The completion of the National Performance Measures Strategy by October 1997 should allow the measures selected to be incorporated into the national enforcement and compliance assurance strategic plan and the annual performance plans required under GPRA. Similarly, in subsequent years (i.e., after FY 98) of performance partnership agreement discussions, the enforcement and compliance assurance measures in those

agreements should shift toward more outcome-based measures and greater use of environmental indicators. This would occur largely as a consequence of identifying an enhanced set of measures and would be dependent on the ability of the States and EPA to agree upon changes in existing reporting in favor of measures that more accurately reflect the performance of our environmental programs.

III. OPERATING PRINCIPLES

Since the 1994 reorganization of the enforcement and compliance assurance program, OECA has developed and implemented many new policies, programs, and initiatives. At our FY 96 national conference, the need for a single, overarching statement of OECA general principles and a common set of defined terms became apparent. Subsequently, a senior level group of Headquarters and Regional managers was formed to develop a set of guiding principles for EPA's enforcement and compliance assurance program. The OECA Operating Principles document titled "Interim Final Operating Principles" dated 11/18/96 is the result of this group's work.

The document is designed to provide program managers and staff with a set of principles which: defines each of the program tools and discusses the best opportunities for their use, provides principles about the integration of those tools, and describes our approach to measuring success. These principles should provide Agency enforcement and compliance assurance personnel with a general framework for program planning and decision making, in addition to aiding other Agency personnel and our external stakeholders in understanding all aspects of the OECA program.

In the course of developing MOA priorities, the OECA Operating Principles provide a framework to consider in selecting those activities best suited to address each priority. Headquarters and Regional personnel should: 1. evaluate the available tools listed in the Operating Principles document; and 2. determine which tools are appropriate when developing specific MOA priority goals, activities, and strategies. For some national priorities, a similar evaluation process has already occurred for FY 98, and the results are identified in the national priorities section of the MOA guidance. The tools discussed in the Operating Principles include: civil and criminal enforcement actions, compliance monitoring, compliance incentives, and compliance assistance. Regions should describe their priority activities in terms of these tools, consistent with the activities already identified for specific national priorities. In addition, the Operating Principles highlight opportunities for coordination of efforts between Federal, State, Tribal, and local entities through: information sharing; collaborative planning and targeting; coordinated strategies; and actions. These collaborative efforts will play a key role in MOA implementation, as well as the negotiation of Performance Partnership Agreements.

In concert with the work on the Operating Principles, OECA is also developing more detailed guidance to better address opportunities and expectations for using compliance assistance. Compliance assistance is a key component of an effective enforcement and compliance assurance program. Compliance assistance is the most direct approach to ensuring that statutory and regulatory requirements are widely known and understood within the regulated community. The "Operating Principles" defines compliance assistance as follows:

Compliance Assistance consists of information and technical assistance provided to the regulated community to help it meet the requirements of environmental law. First and foremost, compliance assistance ensures that the regulated community understands its obligation by providing clear and consistent descriptions of regulatory requirements. Compliance assistance can also help regulated industries find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

We recognize that the current definition of compliance assistance for the FY 97 Agency Activity Profile encompasses a broad spectrum of activities, including outreach materials, providing information on regulatory requirements, and general inquiries to hotlines or information centers. For purposes of developing MOA strategies and commitments and for Agency resource management purposes in FY 98 and beyond, the appropriate scope of compliance assistance should be to address targeted, strategic efforts to measurably improve awareness and compliance. Strategic compliance assistance activities do not include the Agency's routine customer service, response to inquiries or hotlines, which will be captured under Program Leadership and Evaluation. Compliance assistance activities therefore should be:

- 1) linked to enforcement goals, specifically bringing the regulated community into compliance with environmental laws and requirements;
- 2) targeted at appropriate media, sector, or community-based priorities or discrete elements of the core program, the Region should consider the sector and media priorities for which the MOA guidance suggests compliance assistance as an approach;
- 3) part of an overall enforcement and compliance assurance strategy that considers how, if at all, each tool (compliance assistance, incentives, monitoring, and enforcement) will be used, in what sequence, and for what duration; and
- 4) measurable with respect to the scope and impact of the activity.

IV. CORE PROGRAM

OECA is committed to the importance of maintaining a strong compliance and enforcement presence. A core compliance and enforcement program supports our goals, including having a strong enforcement presence to deter non-compliance. It is critical to our continued success, and reflects our belief that compliance is expected for all activities that the Agency regulates. OECA has developed a detailed statute specific core program description, which will be transmitted under separate cover as part of the FY 98/99 OECA MOA Consolidated Technical Guidance. This guidance reflects core activities that need to be considered in establishing a presence. OECA continues to believe that each Region and State must examine the compliance status of regulated facilities within its geographic purview. Working with their States, each Region should apply the range of compliance, enforcement and support tools, as described in OECA's Operating Principles document, necessary to accomplish the compliance and enforcement mission. When negotiating PPAs/PPGs Regions should use this guidance to initiate discussions with their States to establish an appropriate mix of State and Federal activities to provide a minimum presence in all statutory programs. This presence pertains to coverage of all applicable environmental statutes for each enforcement and compliance assurance program.

Within the core program, the Regions perform activities under the following program elements: compliance assistance; compliance incentives; compliance monitoring; enforcement actions; and program leadership and evaluation. The Regions are asked to fill in a matrix chart which describes their enforcement and compliance activities under each of these program components. Regions should include projections for State activities where available, particularly for those efforts where State activities are an integral element of achieving the desired level of enforcement presence; at a minimum, Regions are asked to include State inspection projections. Where a Region feels that the core program cannot be achieved either due to other higher priorities or resource constraints, they should provide a rationale for adjustments proposed.

V. FY 98/99 PRIORITY ACTIVITIES

The FY 98/99 compliance and enforcement priorities are organized around four themes: community-based protection; industry sectors; media-specific; and cross-cutting issues. Regions should work with their

States in developing a Regional MOA document and associated State agreements that fully reflect Regional/State priorities for compliance and enforcement. Based on extensive consultation it is anticipated that Regional/State priorities will correlate with these themes; however, when higher, unique Regional or State priorities exist, they may be substituted for a national priority given appropriate explanation covering public health, environmental protection and compliance status. Detailed descriptions of these priorities are provided in the FY 98/99 OECA MOA Consolidated Technical Guidance.

1. Community-Based Protection

A major component of the FY 98/99 MOA Guidance and the Regional FY 98/99 MOA submissions will be development of multi-media enforcement and compliance strategies for priority communities, ecosystems, and places. Community-based priorities will focus on: (1) environmental or noncompliance problems (multi-media if appropriate) associated with a particular geographic area, including ecosystems, (e.g. watersheds, airsheds) or other natural resource areas of local or Regional concern; (2) environmental results to improve local environmental conditions; and (3) partnerships and stakeholder involvement. Community-based approaches also provide opportunities to address environmental justice concerns. As in the past, nomination of high priority communities or places would be done primarily by Regions working with States, or, in cases where communities cross Regional boundaries, after consultation with OECA and the involved Regions.

The Region/States will use a variety of factors in selecting priority communities and the enforcement/compliance activities may not be pertinent in all phases of these projects. 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.

2. Industry Sector Priorities

A second priority theme for the FY 98/99 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. To assure that attention is focused on resolution of compliance issues in sectors found to be nationally significant, we have identified three sectors as "national priority sectors" and eight others as "significant sectors." These specific sectors were selected as priorities based on factors such as high noncompliance rates; high volume TRI releases, carcinogenic emission release amounts, significant presence and impact in most Regions and States; and feedback provided through Headquarters/Regional/State in-house expertise.

Designation as a national program priority or significant sector means that these sectors 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 targeted use of enforcement tools coupled with the establishment of sector-specific compliance assistance centers, technical assistance and focused outreach and follow-up efforts, where appropriate. Regions should establish a process for initially screening for multi-media impacts within a sector and then tailor a strategy to address identified needs. 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.

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a. National Priority Sectors

The national priority sectors selected in FY 96/97 are retained for the FY 98/99 cycle to allow for effective implementation of sector strategies developed earlier and to achieve a significant improvement in compliance through a concerted effort. Regions should continue to implement and revise as necessary their compliance and/or enforcement strategies for each national sector, and reflect these strategies in their MOA submission. Our national priority sectors are:

- Dry Cleaners
- Primary Nonferrous Metals
- Petroleum Refining

These three sectors have high noncompliance, as indicated by national database information, a significant trans-Regional impact, and the primary nonferrous metals and petroleum refining sectors have high TRI releases. While at a national level, based upon data in our systems, we have not yet seen significant improvements in non-compliance rates in either the petroleum refining or primary nonferrous metals sectors (dry cleaners are not captured in our data systems for the most part), this may be caused by a number of factors: a) data entry lag; b) increased EPA attention resulting in increased violations detected; or c) continuing compliance problems. However, from a Region or State perspective this may not be the case, and significant compliance improvements may have already been achieved. Since these sectors have already received significant focus over the past two years, Regions and States may have other higher priorities to address or may want to assess the effects of past compliance or enforcement activities before committing to further efforts. If a Region or a State feels that a national priority sector does not need further emphasis, it should provide a rationale in its MOA (including an analysis of the measures, associated results and trend data on the facilities within the Region or State). To assist in developing sector strategies and pursuing sector work, please refer to the FY 98/99 OECA MOA Consolidated Technical Guidance for additional information and guidance.

b. Significant Sectors

In addition to the national priority sectors outlined above, eight other sectors have been selected for increased attention during FY 98/99. While these sectors may not present as comprehensive 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):

- Municipalities
- Industrial Organic Chemicals
- Chemical Preparation
- Iron and Basic Steel Products
- Pulp Mills
- Coal Fired Power Plants
- Auto Service\Repair Shops
- Agricultural Practices
- 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 focused attention from the Regional/State enforcement and compliance assurance program during FY 98/99,

the MOA submissions should explain why they were selected and what enforcement or compliance activities are underway or planned.

3. Media Specific Priorities

A third source of enforcement and compliance assurance priorities is pollutant/media-specific environmental and noncompliance problems. OECA, the Regions and Headquarters' media offices collaborated in selection of these media priorities. Following is a list of proposed media priorities for FY 98/99, and more detailed information regarding these priorities can be found in the FY 98/99 MOA Consolidated Technical Guidance. Every Region should address each of these priorities in their MOA. If a Region or a State believes that a media-specific priority does not merit high priority in their Region, they should provide an explanation of their rationale in their MOA.

Clean Air Act:

1. Title V Permits
 - Review all Title V permits that have compliance schedules
 - Review all compliance certifications.
2. Synthetic Minors
 - Investigate synthetic minor permits
3. Air Toxics
 - Review all HON permits
 - Inspect all HON sources
 - Ensure unannounced inspections of chrome electroplaters are conducted
 - Provide compliance assistance to States/sources for new toxics regulations
4. CFC Program Enforcement
 - Ensure deterrence through targeted, highly publicized enforcement actions
 - Investigate tips/complaints regarding violation of Title VI

Toxics:

1. Asbestos
 - Compliance Monitoring/Enforcement of MAP
2. Lead-Based Paint
 - Compliance Assistance/Compliance Monitoring/Enforcement for Lead based Paint

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3. PCBs
 - Compliance Assistance/ Compliance Monitoring/Enforcement of PCB mega amendments

EPCRA:

1. Section 313 Toxics Release Inventory
 - Compliance assistance for industry expansion
2. Section 313 Toxics Release Inventory-Data Quality Enforcement
 - Compliance Monitoring/Enforcement for TRI Data Quality
3. Sections 301-312 Emergency Preparedness Compliance and Enforcement National Initiative
 - Implementation of National Initiative for Emergency Preparedness
4. Strengthen 301-312 Compliance and Enforcement Infrastructure of States
 - Develop and implement the EPCRA 301-312 Infrastructure Strategy
5. EPCRA Executive Order 12856 (Federal Facilities)
 - Monitoring for EPCRA compliance at Federal Facilities

FIFRA:

1. Antimicrobials
 - Enforcement in follow-up to violations involving unregistered and ineffective antimicrobials
2. Urban Pesticides Control and Enforcement
 - Coordination with States on implementation of national strategy
3. Adverse effects
 - Development and issuance of enforcement actions in follow-up to violations

Clean Water Act:

1. Concentrated Animal Feeding Operations (CAFOs)
 - National Compliance/Enforcement Strategy development
 - Conduct compliance inspections and follow-up with enforcement in accordance with the national strategy
 - Coordinate with USDA and State agencies

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2. Urban Wet Weather
 - Ensure compliance with CSO Policy
 - Implementation of the SSO Enforcement Management System
 - Begin assessment of stormwater issues/develop strategy
3. Section 404 (Wetlands)
 - Implementation of Wetlands Enforcement Infrastructure Improvements

Safe Drinking Water Act:

1. Public Water System Supervision--Microbials
 - Compliance Assistance/Enforcement for Microbial Regulations
2. Safe Drinking Water Information System
 - SDWIS Support and Implementation
3. Safe Drinking Water Act Amendments
 - Implementation of SDWA Amendments of 1996
4. Underground Injection Control
 - Compliance Monitoring/Enforcement of Class V Wells

CERCLA¹:

1. Enforcement Fairness/Reduce Transaction Costs
 - Continue to work to achieve equitable fair treatment of PRPs
2. Achieve President's Construction Completion Goal
 - Leverage PRPs through negotiations, settlements and unilateral orders issuance to assure completion of construction at Superfund sites
3. Compliance with CERCLA Section 120 (Federal Facilities)
 - Completion of all outstanding IAGs

¹Superfund targets and measures, will be negotiated through the SCAP process. The Regions do not need to provide the SCAP negotiated information in the MOAs, and the FY 98/99 OECA MOA Consolidated Technical Guidance does not include these priorities in the matrix. Likewise, RCRA corrective action is negotiated through the BYP. Regions should discuss in their MOA any Superfund or RCRA corrective action resources/activities which support sector-based or community based priorities.

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RCRA:

1. Organic Air Emissions Rule (Subpart CC)
 - Volatile Organic Air Emissions from RCRA regulated facilities are a priority for compliance assistance, compliance monitoring and enforcement activities.
2. Generators
 - Facilities generating hazardous waste, especially in priority sectors and community-based areas, are a priority for compliance monitoring, compliance assistance and enforcement.
3. Combustion/Fuel Blenders
 - Facilities blending hazardous waste fuel sent to combustion units and facilities with combustion units are a priority for compliance monitoring, compliance assistance and enforcement.
4. RCRA Subtitle I (Underground Storage Tanks)
 - Enforcement of release detection requirements; after 12/22/98 upgrade, replace or close underground storage tanks not meeting requirements.
5. Transportation (including Airline/Air maintenance facilities)
 - Transportation of hazardous waste, and regulated activities related to the transportation of hazardous waste, are a priority for continued compliance assistance, compliance monitoring and enforcement.

4. Cross-Cutting Priorities

These priorities cut across several media or program areas and have a broad impact on our overall program. These priorities may involve significant time and effort and may result in the Regions shifting resources to accommodate the work associated with these priorities. Where Regions believe the activity identified below is not a priority for their particular Region, they should provide a rationale. Our national cross-cutting priorities are:

- Multi-media Enforcement
- National Enforcement Screening Strategy (NESS)
- Tribal Activities
- Data Quality
- Public Access
- Self-Disclosure Policies
- Environmental Leadership Program (ELP)
- Environmental Justice

VI. RECAP REPORTING

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One of our primary measuring tools is RECAP (Reporting for Enforcement and Compliance Assurance Priorities), which sets forth the entire range of measures and programs from which OECA currently collects data. As discussed in Section II earlier, OECA is focusing on developing measures that look at environmental outcomes to supplement traditional output measures. During FY 96 OECA and the Regions spent considerable effort on reconciling counting procedures to more accurately and consistently credit field actions. We expect that for the FY 98 RECAP update, these modifications will be the most significant change, although we recognize that further work remains. Other modifications to RECAP for the FY 98/99 reporting cycle involve:

- OECA has begun a project to assess measures and methods of data collection relating to Regional and State provided compliance assistance, and anticipates modification at least to reporting procedures and probably some adjustment to the measures themselves;
- adjustments to reflect supplemental RCRA compliance monitoring reporting, which was piloted in FY 96 and FY 97, and which becomes routine in FY 98;
- adjustment to RECAP definitions to resolve discrepancies raised by changes to the RCRA Enforcement Response Policy and retrieval select logic from RCRIS;
- adjustment to air inspection measures to look at coverage of universe of facilities over time;
- the Case Conclusion Data Sheets, the corresponding RECAP measures, and reporting/ processing procedures have been adjusted to accommodate DOCKET as the standard reporting platform; and
- Section V of RECAP includes definitions for priority EPA and State inspections along with the definitions for EPA inspections that are counted in the OECA "shell". These latter inspection counts are not considered the RECAP inspection measures and are provided here solely for the convenience of Regional staff.

The FY 98/99 OECA MOA Consolidated Technical Guidance will provide the reporting forms and definitions for annual commitments for inspections and Drinking Water SNC. This year, the air program is included as an inspection commitment form. Regions may choose to use these charts to report commitments, or they may include them directly into the reporting matrix for the Regional submission. If the Region chooses to include commitments into the matrix, it is imperative that the same data that would be provided into the charts are provided into the matrix to ensure consistency and avoid any double counting.

VII. RESOURCE INFORMATION

Resource information is necessary for a variety of reasons:

- to account for enforcement and compliance FTEs;
- to identify these resources under new Regional organizations;
- to assess trends and shifts in the programs;
- to develop more realistic budget and MOA documents and meet GPRA requirements; and
- to inform Congress and others as to our resource allocations and results.

Resource information for the enforcement and compliance program will be provided through the Agency Activity Profile (AAP); Regions do not need to complete separate charts as part of their MOA submission. Regions should complete the AAP in June, as laid out in the Agency-wide schedule. The activity profile will provide information by appropriation, program component, program element, and activity. Vacancies will also be counted. OECA will pull reports from the Agency database and use these in reviewing MOA commitments. These reports should be available at the end of July and will be used in evaluating Regional MOA submissions.

The matrix for completing the MOA (described in Section IX, below) uses the same program components as the AAP, and includes a column for resource trade-offs. While the AAP provides a snapshot accounting of FTE utilization, it will not explain resource trade-offs the Regions have made of the FTE allocated by the budget process at the beginning of the year. The MOA should include a discussion of where resources have been shifted to conduct other activities, explaining the rationale for the trade-off, the extent of the trade-off and the expected benefits.

VIII. GRANT GUIDANCE

Environmental grants to State, local, and Tribal agencies are tools for implementing environmental programs. These grants have traditionally been awarded on a categorical, program-by-program basis. EPA now, however, has Congressional authority to award Performance Partnership Grants. Also, the National Environmental Performance Partnership System (NEPPS) allows for Performance Partnerships Agreements to serve as grant work plans. In order to ensure strong and effective State enforcement and compliance assurance programs, Regional enforcement and compliance staff should, to the extent possible, be involved in all grant negotiations with States. Regions should use the priorities and activities identified in this MOA guidance, and other relevant guidance documents, as they negotiate all State grant work programs that involve enforcement and compliance assurance. OECA has worked with Headquarters media program offices to ensure priorities for enforcement and compliance are in concert with media program priorities.

In terms of categorical grants, OECA has direct responsibility for the pesticides, toxics and lead enforcement grants. Guidance to assist Regions in their negotiation of State pesticides and toxics enforcement grant work programs will be distributed to the Regions as part of the FY 98/99 OECA MOA Consolidated Technical Guidance. Within the FY 98/99 OECA MOA Consolidated Technical Guidance, discussion of key pesticide and toxics enforcement and compliance activities are included. These are activities which OECA has identified and requests that States commit to in order to undertake implementation of national toxic and pesticide priorities identified for FY 98/99. 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. Also, community-based and sector priorities should be considered when negotiating these cooperative agreements.

Performance Partnership Grants (PPGs) remain voluntary and provide States and Tribes with the option to combine funds from two or more of their categorical grants. As EPA, States and Tribes negotiate program commitments under PPGs, they should continue to focus on performance measures that address both environmental outcomes as well as programmatic requirements. The FY 98/99 OECA MOA Consolidated Technical Guidance describes the partnership mechanisms and the Regional enforcement and compliance responsibilities for implementing them. This information should provide assistance to Regions in their negotiations of these grants.

IX. PROCESS FOR DEVELOPING AND NEGOTIATING FY 98/99 MOAS

A. Format

To assist in the development of the FY 98/99 MOAs, the FY 98/99 OECA MOA Consolidated Technical Guidance provides a format for MOA development. Headquarters will also provide the Regions with this file electronically. We request that all Regions use the standard form, and submit it electronically to Headquarters as part of their MOA submittal. By providing the electronic file, Regions may more easily make adjustments where necessary.

Our goal in developing the MOA submission format was to provide an approach that would ensure that the information in the MOA is used as a management tool. The matrix allows for consistent presentation across Regions and links to both the budget and the strategic plan. It is our expectation that the Regions will use the information to articulate the major activities that they conduct as they relate to the National Enforcement and Compliance Assurance Goals and Priorities, as a basis for internal work planning and for negotiating State grants.

In order to address the expected uses of the MOA, our approach has the following two tiers.

STRATEGIC OVERVIEW DOCUMENT (No more than 10 pages)

Discussion of the Region's strategic directions and program priorities for FY 98/99 organized around the National Enforcement and Compliance Assurance Strategic Plan Goals.

Under each of the 6 National enforcement and compliance assurance goals, each Region will discuss how their overall approach, priorities and Regional initiatives proposed for FY 98/99 support achieving the goals. This discussion could be supplemented by Region specific discussions that address their overall program directions. As Regions prepare this strategic overview, they may want to establish senior level communications with Headquarters to discuss their overall approach and program direction.

WORK PLANNING DOCUMENT

Identification of the Region's priority and core activities, commitments, and resources trade-offs.

In order to facilitate the discussion leading to the final MOA, we designed a matrix which would allocate activities and commitments by statute across the Enforcement and Compliance Assurance program components, and also identify links to strategic goals. We anticipate the use of the matrix will reduce the reporting burden and improve consistency. Regions may still need narrative discussion in addition to the matrix, but it should be reduced from previous MOA submittals. Regions should include projections for State activities where available, particularly for those efforts where State activities are an integral element of achieving the desired level of enforcement presence; at a minimum Regions are asked to include State inspection projections.

The recommended format and a more detailed discussion appears in the FY 98/99 OECA MOA Consolidated Technical Guidance.

B. Schedule for Developing and Negotiating FY 98/99 MOAs:

- In February publish draft MOA guidance
- In early June publish final MOA guidance
- Draft Regional MOAs are due to Headquarters no later than August 22, 1997.
- Headquarters will review and negotiate MOAs no later than October 1997.
- Headquarters will consult with the Regions in December, 1997 about whether changes or revisions should be made in priorities or guidance for FY 99, the second year of the MOA.

C. Reporting Schedule for FY 98 and FY 99

-- Mid year reports due by May 1, 1998 and 1999. 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, 1998 Regions will be requested to submit a brief MOA update which includes:

- FY 99 commitment information;
- changes or adjustments in Regional activities;
- if necessary, resource information about FTEs and grant dollars.

-- End of Year Report due November 15, 1998 and 1999.

D. 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, Headquarters will review the most recent final evaluation report for each Region and will incorporate, as appropriate, the findings, conclusions, proposals, and commitments during the review of the MOA with the Region.

Where either a Regional evaluation or an end of the year MOA report coincide within a month or two, Headquarters 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.