June 19, 2007

MEMORANDUM

SUBJECT: Fiscal Year (FY) 2008 National Program Manager Guidance

FROM: Granta Y. Nakayama /s/
Assistant Administrator

TO: Regional Administrators
State Environmental Commissioners

I am attaching the Office of Enforcement and Compliance Assurance's (OECA) FY 2008 National Program Manager (NPM) Guidance. This guidance outlines OECA's core program activities and their associated commitments and provides a brief overview statement on each of the national priorities. Development of the national priority implementation strategies for FY 2008 is still ongoing, and the strategy implementation teams (SITs) are on target to complete the final problem statements and goals by the end of July.

Regions are expected to enter their draft commitments for both the OECA core and national priority targets into the ACS by July 9, 2007. The core commitments are included in the FY 2008 NPM guidance in Attachment A. The SITs will be developing commitments for FY 2008 in the next few weeks. OECA and the regions will have until September 21, 2007 to complete their negotiations and finalize all commitments in the system.

There have been a number of activities over the past few months that impact the type and number of commitments that OECA will track in the annual commitment system (ACS) in FY 2008. Since its inception in FY 2005, the ACS has been expanded to include measures with a broader Agency scope than the original programmatic commitments that OECA uses for the core and national program priorities, which have primarily been focused on inspections. Examples of measures that support wider Agency performance tracking include the senior management measures and state grant template measures.

Additionally, OECA conducted an FY 2008 ACS measures reduction exercise earlier this year, making this the third year in a row that such an effort was undertaken. Based on feedback received from regions and states as part of this exercise, OECA reduced the number of FY 2007

annual commitments by twenty one. The final FY 2008 NPM Guidance contains sixty-nine commitments. For the remaining commitments, every effort was made to clarify their language and to more clearly define the stakeholders for each commitment.

If you have questions about the Guidance or require additional information, please contact Nicholas Franco, Director, National Planning, Measures and Analysis Staff, by e-mail at franco.nicholas@epa.gov or (202)564-0113.

Your continued commitment to achieving our enforcement and compliance assurance goals for FY 2008 is sincerely appreciated.

Attachments

cc: Assistant Administrators
Deputy Regional Administrators
Catherine McCabe
OECA Office Directors
OECA Deputy Office Directors
OECA Division Directors
Regional Enforcement Division Directors
Regional Media Division Directors
Regional Counsels
Regional ACS Coordinators
Regional Compliance Assistance Coordinators
Regional Tribal Coordinators

FY 2008

Office of Enforcement and

Compliance Assurance (OECA)

National Program Manager Guidance

Executive Summary

Office of Enforcement and Compliance Assurance (OECA) - FY 2008 National Program Manager Guidance

SECTION I: INTRODUCTION

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

The National Program Manager (NPM) guidance for OECA sets forth national program priorities and activities for the enforcement and compliance regulatory programs for FY 2008. The performance expectations and activities outlined in the guidance are the starting point from which headquarters and the regional offices engage to discuss the management of program activities and the distribution of resources. These discussions result in regional commitments for a specific level of activity for the fiscal year. These commitments constitute the agreed upon approach between the regions and the national program managers for achieving performance expectations in both the core program and the national priorities for the fiscal year.

I. Updating National Priority Strategies

OECA selects multi-year national priorities; the current set of priorities runs from FY 2005 through the end of FY 2007. OECA has solicited feedback from EPA regions, and from state and tribal co-regulators through their regions, regarding priority areas for the FY 2008 – FY 2010 period. In addition, a Federal Register notice requesting feedback on our proposed FY 2008-2010 national enforcement and compliance assurance priorities was published on February 9, 2007. Feedback endorses OECA continuing the existing national priorities in FY 2008 – FY 2010 as described in Section II of this guidance. For priorities that continue, their goals and performance based strategies will be updated to reflect progress made and lessons learned during the first three years of implementation.

II. Measures

Based on feedback received from regions and states as part of the FY 2008 annual commitment streamlining exercise OECA reduced the number of annual commitments in this guidance by twenty-one over what appeared in the FY 2007 Guidance. In addition, a handful of commitments were revised or clarifications were provided based on feedback from this exercise.

Addition of OECA's Senior Management Measures, and an expansion of measures

included in the state grant templates has led to the addition of 8 new measures in the FY 2008 Guidance.

Many of the annual commitments in the measures appendix and activities associated with our core enforcement and compliance assurance program support regional priorities, such as concentrated animal feeding operations and tribal enforcement and compliance assurance.

III. Tracking Progress

The Office of Enforcement and Compliance Assurance monitors progress toward annual commitments under each statute of our core program, at a minimum, at mid-year and at the end of a fiscal year based upon regional results entered in OECA databases, our Annual Commitment System, and data for national priorities.

IV. Program Contacts

For general questions or comments on the National Program Guidance for the Office of Enforcement and Compliance Assurance or our Annual Commitments in the Annual Commitment System please contact:

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SECTION II: ENFORCEMENT AND COMPLIANCE NATIONAL PRIORITIES

OECA will continue the majority of our existing national priorities for the period of FY 2008-2010. The performance-based strategies are in the process of being updated, and these updates will be posted on OECA's web site at the following address: http://www.epa.gov/compliance/data/planning/priorities/index.html.

The Petroleum Refining National Priority met its primary goal of addressing 80% of U.S. refining capacity by the end of FY 2006 and was returned to the OECA Core Program at the beginning of FY 2007. Any additional activity to address the remaining 20% of the Petroleum Refining Sector will be carried out as part of the Core Air Program.

National Priority: Financial Responsibility

Financial responsibility protects public health and the environment by promoting the proper and safe handling of hazardous materials and protecting against a liable party defaulting on closure or clean up obligations. These benefits are lost unless there is compliance with the financial responsibility requirements and enforcement where there is a failure to maintain sufficient financial responsibility. Absent financial assurance, protection of human health and the environment would depend on available governmental financial resources. Consistent with EPA's mandate to protect human health and the environment and ensure compliance with the law, as well as the Agency's long standing "polluter pays" principle, an enforcement strategy for obtaining full compliance with financial responsibility requirements prevents improper handling of hazardous materials and the shifting of the costs from the responsible parties to state and federal taxpayers.

Recent events revealed that there are significant issues related to compliance with financial responsibility obligations under current environmental laws. OECA is concerned that entities not providing adequate financial responsibility in accordance with their obligations under federal laws are not providing adequate protection to human health and the environment. OECA's concerns in this area are shared by the Association of State Territorial Solid Waste Management Organizations (ASTSWMO) in Federal Register comments on our FY 2008-2010 national priorities.

EPA has phased-in its approach in the examination of compliance and enforcement financial responsibility issues under the federal laws. OECA initiated the review by looking at the Resource Conservation and Recovery Act (RCRA) Subtitle C closure/post-closure and corrective action and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In FY2008, EPA will continue with RCRA Subtitle I (UST) efforts initiated in FY2006. These efforts focus on working with trade associations and other stakeholders to provide compliance assistance in states which do not have approved programs.

National Priority: Wet Weather

Discharges from wet weather events are the leading causes of water quality impairment as documented in Clean Water Act (CWA) Section 305(b) reports and represent significant threats to public health and the environment. The discharges come from combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), concentrated animal feeding operations (CAFO), and stormwater run off. EPA's wet weather priority strategies focus on key environmental risks and noncompliance problems in each of these areas.

SSOs pose a substantial risk to public health and the environment – the raw sewage in SSOs contains a host of pollutants (bacteria, viruses and other pathogens, oil, pesticides, debris) and can cause serious water quality problems. There is also a high potential for human exposure from SSOs due to their location in communities and the frequency of occurrence (often SSOs occur in parks, city streets, and backyards, or backup into homes and commercial establishments). Like SSOs from separate sewer systems, CSOs, which are composed of both polluted stormwater and untreated human and industrial waste from combined sewer and storm water systems, are a significant cause of water quality impairment and often affect parks, beaches, backyards, city streets and playgrounds. CSOs are a major cause of beach and shellfish bed closures and advisories, as well as fish kills and can contribute to pathogens in quantities that exceed water

quality standards. Discharge of nitrogen, phosphorous and fecal coliform bacteria from CAFOs to water bodies can occur through poor maintenance of waste lagoons, inadequate design, construction, operation, or storage and containment of animal waste, excessive and improper land application of manure, and excessive rainfall resulting in spills and leaks from manure management areas. Discharge of stormwater runoff can significantly impact water quality. Several studies reveal that storm water runoff from urban areas includes a variety of pollutants, such as sediment, bacteria, organic nutrients, hydrocarbons, metals, oil, and grease. These pollutants harm the environment and public health. The discharge of stormwater runoff from construction activities (e.g., land development, road construction) can have significant impact on rivers, lakes, and wetlands. Construction alters natural landscapes. During construction, earth is compacted, excavated and displaced, and vegetation is removed. These activities increase runoff and erosion, thus increasing sediment transport to receiving waters. In addition to sediment, as stormwater flows over a construction site, it picks up other pollutants like debris, pesticides, petroleum products, chemicals, solvents, asphalts, and acids, which may also contribute to water quality problems.

National Priority: Air Toxics - Maximum Achievable Control Technology (MACT)

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

The Air Toxics program first became an OECA priority in FY2000. Since that time, distributing the substantial MACT implementation workload between headquarters and the regions through a regional Adopt-a-MACT program was the objective of this national priority. Through the program, the regions adopted MACT standards and developed compliance monitoring and compliance assistance tools. This approach resulted in the availability of a wide array of MACT implementation tools, such as inspector check lists, applicability flowcharts and compliance time lines. With compliance dates in place for more than 40 MACT standards, and implementation tools available for the majority of these standards, the focus of the Air Toxics priority shifted from primarily a compliance assistance and tool development effort to compliance monitoring and enforcement beginning in FY 2005.

National Priority: New Source Review/Prevention of Significant Deterioration (NSR/PSD)

New Source Review (NSR) requirements in the CAA ensure that the construction of new sources or modification of existing air pollution sources does not jeopardize attainment of National Ambient Air Quality Standards (NAAQS) in non-attainment areas. Prevention of Significant Deterioration (PSD) requirements ensure that the influx of new air pollution sources do not

degrade areas with relatively clean air. The NSR and PSD programs directly control emissions of criteria air pollutants, and the PSD program requires sources to address a number of toxic air pollutants. Avoidance of the required review results in inadequate control of emissions, thereby contributing thousands of unaccounted tons of pollution each year, particularly of NOx, VOCs, SO_2 and PM_{10}. These emissions worsen problems in non-attainment areas and threaten to drive attainment areas into non-attainment. Investigations conducted by EPA at coal-fired utilities, refineries, and other industrial facilities, reveal that many facilities fail to obtain permits or install necessary controls for modifications subject to NSR or PSD..

OECA will continue to pursue filed cases and cases in active negotiation against coal fired utilities. In deciding which additional cases to pursue, we will focus on those that violate our NSR reforms and our latest utility proposal. In addition, we will focus compliance assurance activities on other industrial areas, such as sulfuric and nitric acid, cement manufacturing, and glass manufacturing plants, that display similar patterns of noncompliance with NSR/PSD requirements and have the potential to produce significant human health and environmental benefits.

National Priority: Mineral Processing

The mishandling of mineral processing wastes causes significant environmental damage and results in costly cleanups. These highly acidic wastes cause fish kills and elevate levels of arsenic and cadmium in residential wells. Evidence gathered in recent inspections indicates that mineral processing facilities are failing to obtain the necessary permits and adequately manage waste.

Environmental impacts caused by the mineral processing and mining sectors are significant. The mineral processing sector generates more wastes that are corrosive or contain toxic metals than any other industrial sectors. Over the past decade, many of the facilities that manage these wastes, due either to noncompliance with state or federal environmental requirements or legally permissible waste management practices, create groundwater, surface water, and soil contamination. In addition, the Agency has many mineral processing and mining sites on the Superfund National Priorities List (NPL) and, along with states, undertakes expensive cleanups using other authorities. Environmental damages are especially prevalent in mineral processing and mining operations and often include severe impacts on water supplies and wildlife. Damages tend to be more pronounced at large scale operations, however, some small facilities also cause significant environmental damage. Many facilities are in close proximity to populations, and the health risk to people living near these facilities is of significant concern to EPA.

National Priority: Tribal

Significant human health and environmental problems, associated with several media programs, are present in Indian country and other tribal areas where tribes and tribal members have recognized rights and interests protected by treaty, statute, judicial decisions, or other authorities, including Alaska (hereinafter referred to as “Indian country and other tribal areas”). There are currently 565 federally-recognized Indian tribes (tribes) in the United States responsible for almost 77 million acres of land in Indian country and other tribal areas. While tribes can

maintain their own environmental protection programs and can seek program approval for certain federal environmental programs, EPA generally directly implements federal environmental laws in Indian country. As such, the tribal priority focuses on a variety of environmental compliance issues and seeks to identify and ensure compliance at facilities in Indian country and other tribal areas.

The tribal strategy's primary goal is to significantly improve human health and the environment in Indian country through EPA working with tribes on compliance assistance, compliance monitoring, and enforcement activities. Increasing the quality of Indian Country facility data and information from tribes on off-reservation non-compliance problems will enable OECA and the regions to establish baseline information and target compliance assistance, compliance monitoring, and enforcement activities. To build tribal capacity, EPA continues to focus on providing high quality compliance assurance and enforcement training to tribal environmental professionals and increasing the number of tribal inspectors authorized to conduct inspections on behalf of the Agency. The increased number of EPA-authorized inspectors, on-site compliance assistance visits, and EPA inspections should lead to an increased number of inspection reports submitted to EPA and a subsequent number of compliance determinations.

SECTION III: CORE PROGRAM ACTIVITIES

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

The performance expectations and required regional commitments defined in this core guidance represent national program expectations and do not cover all of the enforcement and compliance assurance efforts conducted in the regional offices. Flexibility is a key component of the national enforcement and compliance assurance program planning process and there is the understanding that, while regions are expected to support national program core and priority activities, there are very real, credible reasons for a region's nonparticipation. There are many factors that influence the level of a region's participation. For example, geographic or sector initiatives, the presence/absence of a regulated sector in a region, regional resources, and high priority regional initiatives all directly impact the regions' contributions to national core and priority activities.

Guidance Applied to All Core Programs:

Ensuring compliance involves the use of all available tools including compliance assistance, compliance incentives, compliance monitoring, and civil and criminal enforcement to address specific environmental risks and noncompliance patterns. In using these tools in the national program, there are certain fundamental activities and requirements for all core program areas.

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

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

The compliance assistance core program in the regions should include the following:

1. A strong regional compliance assistance core program infrastructure:
    - A full-time regional compliance assistance coordinator to provide a focal point for planning and coordination of compliance assistance efforts;
    - Communication networks within the region, across regions, with headquarters, states, tribes, and external environmental assistance providers;
    - Mechanisms to coordinate and strategically build compliance assistance into national, regional, state, and tribal planning processes.

2. Strategic planning for up front consideration and appropriate use of compliance assistance in addressing environmental problems:
    - Plan and coordinate compliance assistance across organizational and programmatic boundaries (e.g., media programs, enforcement, environmental justice, small business) and include states, tribes, and other stakeholders in this process;
    - Use integrated strategic approaches to target and address environmental problems, and consider all available tools, such as compliance assistance, compliance incentives (self-audits, opportunities for pollution prevention and Environmental Management Systems (EMS)), compliance monitoring, and enforcement (See February, 2007, *Guide for Addressing Environmental Problems: Using an Integrated Strategic Approach*).
    - Ensure appropriate use of compliance assistance in the implementation of integrated and performance-based strategies for both national and regional priorities.

3. Tracking and measuring results of compliance assistance activities:

    - Report on planned and actual compliance assistance projects into the compliance assistance module of the Integrated Compliance Information System (ICIS). For completed CA projects, report all outputs and outcomes into ICIS. For on-site visits and revisits, the Compliance Assistance Conclusion Data Sheet (CACDS) should be used to record these outcomes and facilitate data entry into ICIS.
    - Conduct appropriate measurement activities to collect outcome information for direct assistance activities to determine increased understanding, improved

environmental management practices, and pollution reduction outcomes achieved as a result of the compliance assistance provided. Often collecting outcomes requires follow up communication.

Commitment ASST01: Conduct outcome measurement for 100% of all compliance assistance workshops/training, on-site visits and revisits which support the OECA national priorities and report the results of these outcomes into ICIS. Report on exceptions to the 100% and provide brief explanations in the ACS.

3. Providing compliance assistance targeted to appropriate problems, sectors, and geographic areas directly or through other providers (states, tribes, pollution prevention providers, etc.)

- Develop compliance assistance tools, conduct training, workshops, presentations, on-site visits, and/or distribute outreach materials;
- Share compliance assistance tools and opportunities within the regions and externally, e.g., with states, tribes, trade associations;
- Serve as a wholesaler of compliance assistance to enable other providers to offer assistance, including, for example, providing training and tools to providers;
- Place new tools on Compliance Assistance Clearinghouse;
- Continue partnerships with industry, academics and environmental groups to support the fifteen sector-specific Compliance Assistance Centers; initiate the development of a sixteenth Compliance Assistance Center to support the food-processing sector.
- Explore collaborative opportunities between the Compliance Assistance Centers and EPA Program Offices to develop and promote compliance assistance resources.
- Market and wholesale compliance assistance opportunities and tools, and share success stories.

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

EPA promotes compliance through the use of incentive policies. These policies reduce or waive penalties under certain conditions for facilities which voluntarily discover, promptly disclose, and correct environmental problems. EPA encourages the use of such policies, which include the Audit Policy, various compliance incentive programs, compliance auditing protocols, and environmental management systems that result in actions that reduce, treat, or eliminate pollution in the environment or improve facility environmental management practices (EMPs).

EPA's Audit Policy, Small Business Policy and Small Community Policy provide incentives for the regulated community to resolve environmental problems and come into compliance with federal laws through self-assessment, disclosure, and correction of violations. EPA promotes the use of the Audit Policy and focuses on c*orporate-wide auditing agreements* to implement the Policy, assess and maintain compliance, consolidate transactions, and maximize penalty certainty. EPA also is exploring ways to encourage audits and disclosures that achieve significant environmental outcomes, and to increase the focus on these disclosures, as well as ways to improve Audit Policy implementation. Under various Compliance Incentive Programs (CIPs), individual entities or members of a sector disclose and correct violations in exchange for reduced

or waived penalties, while the risk of enforcement increases for those not taking advantage of this opportunity. EPA also promotes the disclosure of environmental information in accordance with the SEC's mandatory corporate disclosure requirements as a means of promoting improved environmental performance. Increasing public access to corporate environmental information maintains a level playing field for companies, and raises company awareness concerning environmental issues.

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

- Participate in compliance incentive programs directed at a particular sector and/or noncompliance problem, with emphasis on violations that impact areas with environmental justice concerns, and violations that, once corrected, are likely to result in measurable pollution reductions.

- Promote EPA's compliance incentive policies (e.g., small business policy, Small Local Governments Compliance Assistance Policy, audit policy), with the assistance of state, tribal, and local agencies, to encourage the regulated community to voluntarily discover, disclose, and correct violations before regulatory agencies identify entities for enforcement investigation or response.

- Consider and follow-up on, as appropriate, self-disclosures submitted under the EPA Audit Policy and Small Business Policy.

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

Compliance Monitoring:

All regional programs should conduct appropriate compliance monitoring activities, which include conducting compliance inspections and investigations, record reviews, targeting, oversight, and review of delegated compliance assurance and enforcement programs (reference to delegated includes authorized programs or programs where a state or tribe has primacy) and responding to citizen complaints. As in the past, NEIC will continue to support ongoing projects for commitments made in previous years, including case preparation and enforcement support.

The core compliance monitoring program includes a number of specific activities. Compliance monitoring comprises all regulatory agency activities to determine whether an individual facility or a group of facilities (geographical, by sector, or by corporate structure) are in compliance with environmental laws and regulations, as well as enforcement orders and settlement agreements. EPA documents and files compliance determinations using various methods (e.g., databases, inspection reports). Compliance monitoring activities occur before and at the point when either compliance or an actual violation is determined. Review and oversight of authorized compliance assurance and enforcement programs continues throughout the year.

Examples of important compliance monitoring activities include:

Inspector support

- training to fulfill the requirements of EPA Order 3500.1, and other applicable Orders (1440.1, 1440.2, etc.);
- developing compliance monitoring tools such as inspection guides, checklists, or manuals;
- promoting the recommendations detailed in the Office of Compliance (OC) guidance, *Final National Policy, Role of the Inspector in Providing Compliance Assistance During Inspections, June 25, 2003;*
- issuing and tracking federal credentials to state and tribal compliance inspectors pursuant to the September 30, 2004 memorandum entitled *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* and the August 5, 2005 memorandum *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf* to ensure state inspectors are trained and credentialed.

Monitoring planning and execution

- developing compliance monitoring strategies that include targeting and information gathering techniques;
- creating a viable field presence and deterrent by conducting compliance inspections (including sampling as necessary), surveillance, and civil investigations in all the environmental media (air, water, waste, toxics, wetlands, etc.) in both authorized and non-authorized programs;
- responding to tips, complaints, and referrals from private citizens, other governmental entities, and non-governmental organizations;
- identifying potential environmental crimes through the civil compliance monitoring program, and referring to the Regional CID area;

Data collection, review, and reporting

- performing compliance data collection, reporting, analysis, evaluation, and management;
- reviewing and evaluating self-reported data and records, environmental permits, and other technical information relating to compliance with environmental laws and regulations;
- maintaining compliance files and managing compliance records;
- preparing reports and entering compliance findings and inspection results into national databases;
- reporting the outcomes of on-site inspections and evaluations using the Inspection Conclusion Data Sheet (ICDS) and analyzing and evaluating the outcomes of compliance monitoring activities;

Program coordination/review/oversight/support

- working with state, tribal, and local environmental regulatory agencies to monitor environmental compliance with environmental laws by private, state, federal, and tribal facilities and ensuring that the implementation of their programs are in accordance with statutory requirements and EPA policy (see also EPA State Relations for more detail);
- identifying, tracking, and coordinating with state, tribal, and local environmental agencies those violators that are, or should be designated as, Significant Noncompliers, High Priority Violators, or Watch List facilities;
- developing, negotiating, or overseeing state or tribal compliance and enforcement grants;
- providing training, assistance, support, and oversight of state and tribal compliance inspectors;
- performing compliance screens for various headquarters and/or state/tribal programs such as Performance Track;
- Conducting federal oversight inspections/evaluations to corroborate state or tribal inspection findings. Oversight inspections/evaluations are a principal means of evaluating both the quality of an inspection program and inspector training (Revised Policy Framework for State/EPA Enforcement Agreements, August 25, 1986); and
- Conducting reviews under the State Review Framework (SRF).

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

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

Civil and Criminal Enforcement:

EPA's national enforcement and compliance assurance program utilizes several types of enforcement actions to correct and deter noncompliance. Civil enforcement authorities include administrative and judicial actions. In situations where violations are knowingly and willfully committed, EPA uses criminal enforcement actions. The criminal enforcement core program seeks to effectively integrate criminal enforcement with the regional enforcement programs. To achieve this purpose, each region will continue to coordinate and cooperate closely with the Special Agent-in-Charge (SAC) of the region's CID area offices. Information sharing and cooperation between EPA's civil and criminal programs, consistent with all legal requirements, is critical to the success of the Agency's overall enforcement program. Each region must establish and operate a civil/ criminal case screening and coordination process. Civil and criminal enforcement personnel should not only conduct regularly-scheduled meetings, but should also meet on an ad hoc basis to receive debriefings related to significant and recently-completed inspections. In particular,

attention should be devoted to information sharing related to the following types of cases: (1) National Enforcement Priority cases/inspections; (2) regional enforcement Priority cases/inspections; (3) Multimedia inspections/cases; (4) Cases involving violations at multiple facilities; (5) Cases/ Inspections involving large and sophisticated corporations whose violations have demonstrable environmental impact; (6) and cases involving facilities categorized as SNC, HPV, or another category of repeat "bad actor."

In using its civil and criminal enforcement authorities EPA regions are responsible for:

- adhering to the applicable program enforcement response policies (ERPs), the timely and appropriate (T&A) guidance (where these exist), applicable penalty policies, the Final Supplemental Environmental Projects Policy, implementation of the Watch List project, and the SRF;
- tracking compliance with consent decrees and administrative orders, and taking all necessary actions to ensure continued compliance;
- entering all required data into the national databases, where applicable, and completing and entering the case conclusion data sheets (CCDS) for all concluded actions, including those in the CERCLA program, into ICIS;
- continuing to resolve enforcement cases initiated prior to FY2008 and ensure investigation and issuance of appropriate action for any open tips/complaints/referrals received by EPA;
- working with the Department of Justice and EPA Headquarters as appropriate to complete outstanding judicial and administrative actions;
- continuing and completing appropriate case development activities including issuing information requests, conducting site visits, and developing appropriate remedies.
- identifying leads appropriate for criminal investigations based upon the criteria in the January 12, 1994, Memorandum on the Exercise of Investigative Discretion;
- submitting appropriate leads – including cases or aspects of cases that were initially developed for administrative or civil enforcement but later reveal potential criminal wrongdoing – to the regional screening committee where discussions and decisions will be made as to whether violations will be pursued administratively, civilly, or criminally;
- providing technical support to CID investigations, provide regional personnel as witnesses when necessary, and maintain legal staff support to CID at levels sufficient to ensure the prompt prosecution of environmental crimes; and
- ensuring that all environmental measurements or samples used to support EPA criminal investigations will be gathered, recorded, and analyzed in a manner that complies with the EPA quality assurance system, and that all evidence collected will be handled and kept secure in accordance with EPA policies for the custodial management of evidence.

D. Guidance: Technical Support and Training

NETI - The National Enforcement Training Institute is committed to the continuing assessment of emerging training needs, strengthening its role as a clearinghouse for training information within the enforcement and compliance assurance program, exploring cost effective means of delivering both classroom and distance training, and working with regions and HQ

offices to develop a strategic approach to enforcement and compliance assurance training. NETI also continues its role as developer, coordinator, publisher, and trainer for federal, state, local and tribal attorneys, inspectors, civil and criminal investigators and technical experts in all the various tools for environmental compliance and enforcement.

In 2006, NETI established the Enforcement and Compliance Assurance Training Council, and instituted a network of key players from the regions and OECA to effectively manage training and continuous learning in the program. Better exchange of information and reporting about training activities in the enforcement and compliance program promotes efficiencies, opportunities and reliability. This network will also discuss and evaluate training needs and develop mechanisms to communicate about current and future training needs. All regions and OECA offices participate in the Network which has the following charge for legal and nonlegal training interests:

- serve as a voice, advocate, and source of expertise on enforcement and compliance training for the office;
- have direct access to senior leadership on training matters;
- coordinate and report requested training information from their office and report pertinent information to the office;
- participate in regular training meetings/conference calls; and
- assist in planning for enforcement and compliance training events held for and/or offered by the office (or delegate others to assist).

In 2008, regions are asked to support this network in the following ways:

- Assist regional representatives in identifying training needs and carrying out other informal information surveys for the network and the parallel legal training network;
- Share regional strategic plans for enforcement and compliance assurance training;
- Consider announcing courses offered by the region on NETI's website http://www.epa.gov/compliance/training/neti/index.html, especially courses open to other regions' attendance;
- Work with NETI staff to ensure the accuracy and quality of data reporting for training activities (see below).

NEIC - The civil and criminal enforcement programs draw upon the scientific and technical expertise of the NEIC in compliance monitoring and enforcement activities in both the national priority and core program areas. Assistant Administrator priorities , the Agency Strategic Plan, the Government Performance and Results Act (GPRA), and the national goals effort also guide NEIC project selection. Furthermore, NEIC will examine requests for assistance based upon the potential for producing measurable environmental results and the degree to which activities provide opportunity to use or enhance NEIC's unique capabilities (e.g., multi-disciplined teams, in-depth process evaluations, complex analytical procedures, etc.).

E. Guidance: Data Quality and Reporting

OECA continues to strive to improve the quality of enforcement and compliance data and assure this information is a useful tool to manage the program and to reliably report on accomplishments. This effort to improve and attain a high level of confidence in performance information focuses on two areas: data quality and reporting. Data quality, accuracy and completeness are also elements of the SRF, and through Framework reviews, regions should ensure that states enter all required data into the national systems of record in a timely way.

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

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

- quarterly data quality reviews of enforcement and compliance data,
- timely entry of data (i.e., within two weeks after occurrence of the activity),
- mid-year and end-of-year certification by Senior Managers of data completeness and accuracy, and
- distribution of monthly ICIS manager reports,
- In addition, other steps implemented to provide guidance to ensure data integrity include IPOD (ICIS Policy on Demand), a desktop accessible and searchable repository of information on data entry to ICIS

OECA issues an annual Enforcement and Compliance Reporting Process memo each fiscal year that provides core and national priority reporting requirements, GPRA measures, schedules/deadlines, contacts, etc. This memo is OECA's comprehensive guide to the annual enforcement and compliance reporting requirements covering the various enforcement and compliance program tools (e.g., compliance assistance, compliance monitoring, compliance incentives, enforcement) in all media program areas (e.g., CAA, CWA, FIFRA, RCRA, TSCA, CERCLA).

Regions must enter all federal enforcement cases in ICIS, the database of record, and also in the associated legacy system, if one exists. Applicable CCDS information on all concluded actions must also be entered into ICIS and applicable CACDS data should be entered into ICIS. For CAA, RCRA, and CWA/NPDES inspections in states not yet migrated to ICIS-NPDES, the legacy systems (e.g., AFS, PCS, RCRAInfo) are the data base of record for Federal inspections, violations, significant violators (SNCs)/high priority violators (HPVs); ICIS-NPDES is the database of record for federal inspections for all states that moved from PCS to ICIS-NPDES,

however, many regions also enter inspections into ICIS. Beginning in FY 2007, all federal TSCA, FIFRA, and EPCRA 313 compliance monitoring information previously tracked in and reported in the FIFRA/TSCA Tracking System/National Compliance Data Base (FTTS/NCDB), is now reported into ICIS. See the September 29, 2006 memo regarding closure of the FTTS/NCDB database and use of ICIS for FIFRA and TSCA compliance monitoring and enforcement activities. Enforcement activities that, in the past, appeared in both ICIS and FTTS/NCDB no longer need to report information on enforcement activities in FTTS/NCDB, because ICIS replaces these legacy systems for the tracking of all federal activities.

An October 11, 2005 memorandum from the Deputy Assistant Administrator of OECA, entitled "Entering Manually Reported Federal Inspections into ICIS" established ICIS as the official database of record for all federal inspections and associated Inspection Conclusion Data Sheets (ICDS) information previously reported manually. This means that OECA will no longer accept manually reported inspections, and will pull federal inspection and ICDS results for the following programs from ICIS**:** RCRA Underground Storage Tanks**,** EPCRA 313, EPCRA non-313**,** CWA Oil Spill Prevention (SPCC)**,** CWA Wetlands**,** CWA NPDES (EPA and state inspections conducted in states migrated to ICIS-NPDES), CAA Mobile Sources**,** CAA Asbestos and Demolition**,** FIFRA, SDWA PWSS Inspections**,** SDWA UIC**,** CWA Pretreatment Industrial Users (IUs), and TSCA. Regions have the option to either enter ICDS data into ICIS or report manually using the Regional Mid-Year and End-of-Year Excel Reporting Workbook for the following media programs, which still employ the legacy database for inspections: CAA Stationary Sources (AFS), RCRA Hazardous Waste (RCRAInfo) and CWA NPDES (for EPA and state inspections conducted in states using PCS).

Until a state or tribe with an EPA-approved program successfully transitions over to the use of the ICIS-NPDES system, the Permit Compliance System (PCS) will remain the database of record. Once a successful transition to ICIS-NPDES takes place, ICIS-NPDES will be the database of record. Minor data should be entered into PCS or ICIS-NPDES for regional, state, and tribal activities where activities at minor facilities (e.g., inspections) have been traded for those at major facilities, such as in the national priorities.

Since FY 2007, regions and headquarters offices will be expected to enter information into ICIS or a comparable data system regarding civil judicial, non-CERCLA consent decrees to demonstrate that EPA is effectively monitoring compliance with the terms of these decrees. This requirement applies only to consent decrees entered by a court after October 1, 2006. This action is in response to a 2001 Inspector General Report that encourages enhancement of efforts by the Agency to monitor compliance with enforcement instruments. Information regarding data entry into ICIS and a more detailed description of evaluation of measure performance will be issued separately.

Training, Data, and Reporting

Regions and OECA offices are encouraged to provide timely and accurate mid-year and end-of-year reports of compliance and enforcement training activities through the national data reporting process. In FY 2008, NETI will work with the regions to enhance the reliability,

consistency, and efficiency of this reporting process. Training data are compiled into an annual Training Accomplishments Report (available from http://cfpub.epa.gov/compliance/resources/reports/ accomplishment/details.cfm), and are analyzed in order to inform needs assessments, strategic planning, and project development.

F. Guidance: EPA State Relations

OECA has worked closely with EPA regions, the Environmental Council of States (ECOS), state media associations, and other state representatives to jointly develop a framework and process for conducting reviews of core enforcement in the CWA-NPDES, RCRA Subtitle C and the CAA Stationary Sources programs. The goals of the reviews are to promote consistent levels of activity in state and regional enforcement programs, consistent oversight of state and regional enforcement programs, and consistent levels of environmental protection across the country. In July of 2005, full implementation of SRF was initiated with the goal of completing reviews of all states and territories by the end of FY2007. At the beginning of FY2008 (i.e., October 2007), OECA will work with its partners to conduct an evaluation of the first full cycle of SRF implementation. The 2nd Quarter of FY 2008 will be used to modify and improve the SRF process and metrics. This evaluation will be completed by the end of calendar year 2007. Regions are expected to begin the second round of evaluations in April 2008 (3rd Quarter) and complete that round by the end of FY2010.

The elements, criteria and protocols of the SRF are consistent with the 1986 "Revised Policy Framework for State/EPA Enforcement Agreements" and the media-specific enforcement response policies, compliance monitoring strategies and penalty policies. These reviews constitute the primary mechanism by which regional oversight of state enforcement programs should be carried out in the three media programs. These reviews should be an integral part of the regional/state planning process. State/regional commitments for program improvements should be captured and tracked in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the region and the state, and those parties held accountable for carrying out those commitments. Regions with multiple year PPAs, PPGs, or categorical grant agreements that are already in place, should include a schedule in those agreements that incorporates the SRF process as part of program review activities; generally using a three year cycle for any state. Regions that have states submit proposals under Element 13 should consult with OECA on whether or not credit can be granted.

For the second round of reviews beginning in FY2008, regions should plan to review the states where the most significant issues were identified the first review cycle. Annual Commitment System (ACS) measures associated with the SRF will include the number of reviews completed within a Fiscal Year (compared to the number of states and territories under the region's jurisdiction). Reports, data metrics and analysis, recommendations and benefits arising from Framework reviews should be entered by the region in the Lotus Notes SRF Tracker database upon completion of a review, and will continue to be tracked and managed by OECA.

<u>Grants Management</u>

OECA awards a number of assistance agreements to states, tribes, and non-profit organizations to conduct a variety of activities, particularly in the areas of data management and performance measurement, many of which regions manage. OECA wants to emphasize that effective grants management is a high priority for the Agency. The primary Agency guidance for managing assistance agreements is EPA Order 5700.6, effective January 1, 2005. The Order streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and grant management. The order encompasses both the administrative and programmatic aspects of the Agency's financial assistance programs. It requires EPA to develop and carry out a post-award monitoring plan, and conduct basic monitoring for every award. In January 2004, a new Grants Policy Issuance, GPI 04-02, Interim Policy on Environmental Results Under EPA Assistance Agreements, came out of the Office of Grants and Disbarment (OGD). This policy instructs EPA to describe the goal level link to the Agency's Strategic Plan for each grant awarded after February 9, 2004. OGD developed a new EPA Order that requires EPA and grant recipients to discuss the environmental results of grants in grant work plans. This Order became effective on November 30, 2004. Regional offices need to consider these new and upcoming policies when preparing assistance agreements with states.

Standardized Template for State Grant Agreements

In order to improve program effectiveness and enhance accountability, OMB requires EPA to develop a standardized template for states to report and submit the results from state grant agreements. This request only covers continuing environmental grants, not project grants. To address the OMB requirement the Office of the Chief Financial Officer, the Office of Congressional and Intergovernmental Relations, and the Office of Grants and Debarment convened a workgroup to develop such a template. Final guidance on state grant templates appears on the following web site: http://www.epa.gov/ocfo/npmguidance/template.htm.

The OECA grants covered by this requirement are: FIFRA Pesticide Enforcement Grants, TSCA Asbestos Grants, TSCA PCB Grants, and TSCA Lead Grants (see Attachment B). The templates include performance measures for the respective grants, and demonstrate the linkage between activities funded by the grant and the Agency Strategic Plan. These templates must be included in all state grant agreements in FY 2008. It is expected that most of the data for the grant template measures will be reported into the Annual Commitment System. The grant templates for the most part use existing measures, and states are expected to maintain all other data flows required by the programs in order to maintain good program management.

Innovative Programs

Innovative programs continue to be important to the compliance and enforcement program. Regions, states, and tribes are encouraged to consider implementation of innovative projects for the 2008 planning cycle. EPA's Innovation Action Council (IAC) endorsed three priority innovations for "scale-up," (i.e., full scale implementation) and recommended integration into OECA's NPM Guidance. These priority innovations are: the National Performance Track Program, Environmental Management Systems (EMS), and the Environmental Results Program (ERP). Details on these innovations are available at http://www.epa.gov/innovation. Regions, states, and tribes are encouraged to use these innovative approaches in the achievement of their

program goals. OECA works closely with the Office of Policy, Economics, and Innovations on one of the Agency-wide programs, the National Environmental Performance Track Program (Performance Track). When participating in Performance Track (PT), regions should be aware of three relevant guidance memos: "Enforcement and Compliance Operating Principles for the National Performance Track Program," January 19, 2001, "National Environmental Performance Track Program," April 23, 2002, and "National Environmental Performance Track Program," October 29, 2003. In support of PT, the regions, states, and tribes (in concert with headquarters offices and DOJ) are expected to conduct comprehensive compliance screens of all applicant facilities. The regional effort includes searches of Agency databases, follow-up on information found, program by program inquiries about new information not yet accessible in databases, and coordination with state and tribal partners to the fullest extent possible. The region will assess the findings against the PT entry criteria, and make recommendations as to the appropriateness of each facility's participation.

One of the incentives offered through PT is the Agency's commitment to consider all participating facilities as "low priority for routine inspections." Regions should incorporate these commitments in inspection targeting efforts, both in the context of regional targeting and planning agreements with OECA and to the extent possible in negotiating with state and tribal partners in their performance agreements and work plans. "Low priority for routine inspections" should not be interpreted to mean that regions should not inspect PT facilities. A memorandum clarifying the implementation of low priority for routine inspections is being developed by OECA and will be available in FY2007. A list of the PT facilities in each region that are eligible for a low-inspection priority will be available from the Regional PT Coordinator.

On March 22, 2005, EPA published a proposal to exempt five categories of area sources from the Title V operating permit program. Although these sources would be exempt from the Title V program requirements, they would continue to be responsible for complying with the underlying regulatory requirements established in the applicable National Emission Standards for Hazardous Air Pollutants. If the exemption is adopted, state/local, or tribal agencies may want to supplement their traditional compliance monitoring activities for these source categories with an oversight program such as the ERP to improve compliance with the underlying regulatory requirements. It combines the following three elements to improve compliance: (1) an annual facility-specific, self-certification questionnaire; (2) compliance assistance to educate and train affected facilities; and (3) a performance measurement method to track and validate facility performance. To learn more about the ERP approach, visit the EPA website at http://www.epa.gov/permits/

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

Superfund enforcement and RCRA Corrective Action are covered under Goal 3 of the Agency's Strategic Plan. It is important for regions to address Superfund and RCRA Corrective Action program commitments for Goal 3. EPA develops and conveys national program direction for Superfund activities through the Superfund Comprehensive Accomplishment Planning (SCAP) process. RCRA Corrective Action is in the Office of Solid Waste and Emergency Response

(OSWER) NPM Guidance.

The commitments for Superfund enforcement are to maximize Potentially Responsible Party (PRP) participation at Superfund sites by leveraging PRP resources and recovering costs. These commitments are included in OECA's portion of the annual commitment system. The regions report the data in CERCLIS and certify it through OECA's annual certification process. The commitments for RCRA Corrective Action address two RCRA environmental indicators (EIs), which measure human exposure under control and migration of contaminated groundwater under control. Regions are encouraged to use enforcement authorities and tools where appropriate to address EIs and final clean-up. In addition, the Superfund and RCRA Corrective Action program commitments for the financial assurance priority are included in OECA's portion of the annual commitment system and accomplishments are reported manually.

National Program Core Requirements:

Ensuring compliance involves the use of all available tools including compliance assistance, compliance incentives, compliance monitoring, and civil and criminal enforcement that are appropriate to address specific environmental risks and noncompliance patterns. In using these tools in the national program, there are certain fundamental activities and requirements that need to be carried out for all core program areas.

A. Requirements: Clean Water Act (CWA) Programs

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

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

Each program has different characteristics (e.g., some programs have national data bases and some do not), and, as a result, the “core program” varies somewhat from program to program. Therefore, in order to provide clarity, shared core program elements are listed Section III: “Guidance Applicable to all Core Programs,” while this section includes descriptions of compliance and enforcement activities unique to each water program. Regions should refer to both sections for complete details on all core program elements. Regional NPDES programs are responsible for referencing the 1989 Enforcement Management System (EMS) guidance in PPAs and PPGs, and thereby ensuring that states and tribes with primacy implement adequate core program requirements.

All CWA programs share the following core program requirements and should be implemented by regions, including direct implementation in Indian country, and states:

- Follow guidance provided in existing national compliance and enforcement policy and guidance, e.g., the 1989 *National Enforcement Management System (EMS)*;
- Consider all available data in implementing the compliance and enforcement activities described below;
- Maintain an effective inspection program in each of the five water program areas;
- Focus assistance, incentives, monitoring, and enforcement actions in the national priority areas described in Section II, while maintaining a viable presence in all water programs;
- Priority water areas include watersheds, public drinking water intakes or designated protection areas, waters that could impact shellfish beds, waters with threatened or endangered species, waters designated as primary contact recreation, and waters located in areas with environmental justice concerns;
- Evaluate all violations, determine an appropriate response, and take timely and appropriate actions against facilities in significant noncompliance (SNC), especially those causing facilities to be on the Watch List according to the EMS;

COMPLIANCE ASSISTANCE *(Sub-Objective 5.1.1)*

Compliance assistance is an appropriate tool, in particular, when there are new rules, sector specific compliance problems, and sectors with a preponderance of small business. Regions should refer to the compliance assistance activities description in Section III. A - Core Program Activities.

COMPLIANCE INCENTIVES *(Sub-Objective 5.1.3)*

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

MONITORING AND ENFORCEMENT *(Sub-Objective 5.1.3)*

Compliance Monitoring

NPDES Program

Performance Expectations

Majors Inspection Coverage

- The Agency goal is to annually provide inspection ability for 100% coverage by EPA and states of all major NPDES facilities or equivalent coverage of a combination of major and priority minor facilities annually. The goal of 100%, which includes Indian country, applies to the combined efforts of both EPA and delegated state programs. The regulations found at 40 CFR 123.26(e)(5) indicate: "State NPDES compliance evaluation programs shall have procedures and ability for . . . inspecting the facilities of all major dischargers at least annually." The new policy to guide the use of NPDES inspection resources [also known as the

NPDES Compliance Monitoring Strategy (CMS)] is not final at the time of issuance of the FY 2008 National Program Managers Guidance. Upon issuance of the new NPDES CMS, OECA will provide any necessary additional guidance and timetables for transition from the goals contained in the FY 2008 National Program Managers Guidance to the goals in the new policy. At the discretion of the regional offices, regions and states may begin to develop long term inspection goals and plans that incorporate the general approaches contained in the January 26, 2007 draft of the CMS.

In FY 2008, the NPDES inspection year used for negotiating commitments, inspection coverage, etc. based on the EPA fiscal year will begin on October 1, 2007 and end on September 30, 2008.

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

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

This information will be discussed during mid-year and end-of-year discussions between OECA and the regions at national meetings, scheduled conference calls, and one-on-one conversations with individual regions. State coverage of major and minor facilities is a major component of the SRF.

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

Commitment CWA01: Project by state the number of federal inspections at NPDES major facilities.
Commitment CWA01.s: Project by state the number of state inspections at NPDES major facilities.

Note: Policy options are under development for other approaches to guide the use of NPDES inspection resources. The regions and states will be requested to fully participate in these discussions.

Oversight Inspections

Regions should conduct a sufficient number of oversight inspections to ensure the integrity of each state's compliance monitoring program. The definition of oversight is in the *August 1986 Revised Policy Framework for State/EPA Enforcement Agreements* and the *FY 1987 Guidance for Oversight of NPDES Programs.* The policy says: "Oversight inspections are a principal means of evaluating both the quality of an inspection program and inspector training." The documents also clarify that oversight inspections can be conducted in two ways: 1) by accompanying state inspectors during inspections, or 2) by conducting a separate inspection at the same facility at a later date to verify the same findings. The regions have flexibility to determine the appropriate number of oversight inspections needed to ensure proper state inspection conduct and documentation. The documents also clarify that oversight inspections are **not** "joint" inspections.

Oversight inspections should be conducted in coordination with the SRF. Oversight inspections provide valuable insight into the quality of a state inspection program, and help target reviews under the SRF and further explore identified issues.

Commitment CWA03: Project by state the number of federal oversight inspections to be conducted.

Biosolids/Sludge

Regions planning to conduct additional sludge inspections instead of other CWA core activities should develop a rationale for their investment in this program and report these inspections into the Permit Compliance System (PCS). One rationale for doing biosolid inspections is to support the pre-treatment program. Metals and other elements in biosolids can be an indicator of pretreatment problems. OECA will review the number of biosolid inspections conducted by the regions at mid-year and end-of-year as part of the enforcement and compliance reporting process.

Pretreatment Program

Performance Expectations

Where EPA is the control authority, regions should annually inspect 80% of the approved pretreatment programs. Audits should be conducted at least once every five years. In addition, regions should evaluate each Significant Industrial User (SIU) file (e.g., review the DMR and periodic compliance reports) and conduct investigations at 100% of the SIUs that have serious violations identified in their periodic reports (e.g., effluent 20% over the pretreatment limit), or where the region has information suggesting the SIU discharge may adversely impact POTW operation, effluent quality, or receiving body water quality.

The EPA/State Enforcement and Compliance Data Standards workgroup defines investigations as: "an extraordinary, detailed assessment of a regulated entity's compliance status which requires significantly more time to complete than a typical compliance inspection (i.e.,

several weeks, as compared to one or a few days)". Here is the link to the enforcement and compliance data standard workgroup: http://www.epa.gov/edr/fenfcompbr.pdf

> **Commitment CWA05:** Project by state the number of federal inspections of POTWs with an approved pretreatment program in both approved and unapproved states.
>
> **Commitment CWA05.s:** Project by state the number of state inspections of POTWs with an approved pretreatment program in both approved and unapproved states.

There is some concern, that there is no consistent method to define the universe of SIUs that require investigation. OECA will work with the regions and the Office of Water (OW) to define the universe, since OW flagged this issue as a program deficiency.

Note: Policy options are under development for other approaches to guide the use of NPDES inspection resources. The regions and states will be requested to fully participate in these discussions.

Section 404 (Wetlands)

Regions should have a process for identifying, targeting, inspecting, and otherwise responding to illegal activities. Since only two states and no tribes have been delegated parts of the Section 404 program, this is primarily a federal effort. The regions must also coordinate, as appropriate, with other federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., U.S. Army Corps of Engineers, Natural Resources Conservation Service (NRCS), Fish and Wildlife Service, etc.)

CWA Section 311 (Spill Prevention Control and Countermeasures (SPCC) and Facility Response Plan (FRP) Program

CWA Section 311 provides statutory authority for program implementation and enforcement. However, responsibility for program implementation (including most of the compliance monitoring and compliance assistance responsibilities) resides with the Office of Solid Waste and Emergency Response/Office of Emergency Management at headquarters and, in a number of different regional divisions including: Emergency and Remedial Response; Superfund; Hazardous Waste Cleanup; Environmental Cleanup; Ecosystems Protection and Remediation; and Waste Management.

Compliance and enforcement efforts in CWA 311 should focus on ensuring that regulated sources maintain and implement the required Spill Prevention Control and Countermeasures (SPCC) plans and/or Facility Response Plans (FRP). Typically, regions should check compliance monitoring at facilities subject to SPCC or FRP requirements to ensure that plans are adequate, meet the regulatory requirements, and are implemented as shown by a commitment to resources and training. In light of continuing concerns regarding chemical safety, regions should also ensure that some FRP facilities are targeted for compliance monitoring and compliance assistance considering that these facilities have large quantities of oil and may have a

close proximity to population centers and/or critical infrastructures (such as drinking water intakes).

Enforcement

NPDES Program

The underlying tenet of the enforcement program is that each violation deserves some type of enforcement response. Guidance on the appropriate response to different types of violations is contained in the Enforcement Management System http://www.epa.gov/compliance/resources/policies/civil/emscwa-jensen-rpt.pdf. Regions are expected to evaluate all violations, determine an appropriate response per the EMS, and take that action. Regions should focus actions in the national priority areas while maintaining a presence in all water programs.

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

State, and where they exist, tribal SNC identification and enforcement responses are major components of the Watch List and the SRF. Regions should monitor state performance through these tools and the use of OTIS management reports.

Section 404 (Wetlands)

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

CWA Section 311 (SPCC & FRP)

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

PROGRAM OVERSIGHT

NPDES Program

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

Regions also should routinely review data submitted by states to PCS or ICIS-NPDES and review other information available to them on a facility's compliance with its permit and other CWA requirements.

Regions should conduct an SRF review of their states' and territories' NPDES compliance and

enforcement programs by the end of FY 2010.

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

- number of SNCs *identified* (and percent of universe);
- number (and percent) addressed in a timely and appropriate manner;
- number of Watchlist facilities per region.

Pretreatment Program

The regions should review state programs for evaluating local control authority operation during the FY 2008 period of this Guidance. If regions discover problems, the regions should take appropriate action.

Wetlands

Since only two states and no tribes have delegated parts of the Section 404 program, this is primarily a federal effort. The regions must coordinate, as appropriate, with other federal agencies which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement (e.g., U.S Army Corps of Engineers, NRCS, Fish and Wildlife Service).

CWA Section 311 (SPCC & FRP)

Regions should routinely review the program to determine if the risk of spills from oil storage is being adequately addressed by reviewing the Emergency Response Notification System database and, reviewing SPCC inspection reports and results of Expedited Settlement Agreements and other enforcement settlements to determine if routine non-compliance is being addressed.

Please refer to the Federal Facilities Enforcement and Compliance core program narrative in ***Section I*** *for additional core program requirements.*

B. Requirements: Safe Drinking Water Act (SDWA) Program

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

The following clarifications are provided to ensure that Headquarters and the regions have a common understanding of the program implementation requirements when negotiating the

commitments:

- The Safe Drinking Water Information System Operational Database System (SDWIS/ODS) is the main database system used by EPA, states, and tribes with primacy to track public drinking water systems. The modernization of SDWIS/ODS was completed in 2006.

- Based upon discussions with the regions a "Fixed Base" SNC/Exception List will be generated from the frozen July SDWIS database. The list will include PWSs of all sizes and types. Using this list the regions will commit to a specific number of systems that the region along with their states and tribes with primacy will address or resolve between July 2007 and June 2008. The regions do not need to specify the names of PWSs that they plan to address.

- The regions, states, and tribes need to all address actions in SDWIS by June 30, 2008, so the numbers achieved will be available for the October End-of-Year results

- The expectation is that the regions will work primarily with the states and tribes with primacy to ensure that they are addressing SNC/Exceptions. The regions should not have to address all the SNC/Exceptions themselves.

- Headquarters will provide quarterly data for new SNCs, about to become exceptions, and new exceptions until such a time as a standardized pull is developed for use in the modernized SDWIS/ODS data system. The regions can use the quarterly data to determine if recently identified SNCs are higher priorities than some SNCs listed on the Fixed Base List. When these high priority SNCs are addressed by a region or state, these count toward the regional commitment number for the Fixed Base List as a substitute for systems on the July Fixed Base list.

- Regions will report to headquarters at midyear on the number of PWSs addressed from the fixed base list and the number of PWSs addressed.

- It is possible that OECA will develop and implement a new SNC/ERP policy and that negotiations may have to take this into consideration.

The effort to address new SNCs before they become exceptions does not diminish the importance of addressing the backlog of systems in exception (all system sizes). As resources allow, the regions, states, and tribes with primacy are encouraged to address the backlog of systems in exception.

COMPLIANCE ASSISTANCE ***(Sub-Objective 5.1.1)***

Public Water System Supervision (PWSS) Program

Regions should target compliance assistance toward small drinking water systems (serving 3,300 or fewer users). Using the data contained in SDWIS/ODS to identify patterns of noncompliance, regions can both target the small systems most likely to benefit from compliance assistance and assemble compliance assistance materials suited to their particular needs. Regions should coordinate with the drinking water program office and work with the states and tribes to increase small system operators' awareness of their monitoring and reporting requirements, and to build small systems' technical and financial capacity to perform required activities. Regions should focus compliance assistance resources on helping small systems and tribal systems comply with microbial and new rules. Compliance assistance efforts will include outreach and education programs to ensure that sources understand both the requirements and the assistance available to help them comply. While the optimal time for compliance assistance is before a system violates a standard, compliance assistance is useful when a system fails to comply also. Where compliance assistance is likely to return a small system to compliance, the regions should incorporate compliance assistance in their tools for addressing SNCs at small systems, and encourage their states and tribes to do likewise.

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

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in the ICIS and report all on-site assistance visits and outcomes using the CACDS. Please note that the core compliance assistance program sets out other general guidance and expectations the regions should follow when providing compliance assistance to public water systems.

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

Regions should report the percentage of small systems that have received compliance assistance. Regions should have a goal of reporting 100% of the four specific compliance assistance performance measures identified in the Data Quality and Reporting section below.

COMPLIANCE INCENTIVES *(Sub-Objective 5.1.2)*

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

MONITORING AND ENFORCEMENT *(Sub-Objective 5.1.3)*

Monitoring

Public Water System Supervision (PWSS) Program

The primary enforcement authority (i.e., a state with primacy, a tribe approved for treatment as a state, or EPA implementing the drinking water program) is required to ensure an effective sanitary survey program. When appropriate, regions should also incorporate a SDWA component in all multimedia inspections of federal facilities as outlined in the federal facilities core program section of this guidance (Section I). Significant deficiencies are to be corrected and regions are to ensure discovered regulatory violations are addressed in a manner consistent with timely and appropriate guidelines with annual workplan commitments.

Underground Injection Control (UIC) Program

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

Enforcement

Public Water System Supervision (PWSS) Program

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

Commitment SDWA02: States and EPA will address or resolve Public Water Systems listed on a 'Fixed Base' SNC/Exceptions list. It is recommended that high priority systems be substituted for lower priority systems on the fixed base list. The regions should provide a break out number by state in the comment field

DATA QUALITY AND REPORTING

Efforts to assess the quality of the data in the SDWIS/FED indicate that the data in the system are highly accurate, but many violations are not in the system. As a recent Inspector

General Report[ii] notes, data verifications conducted on violation information for the period between 1999 and 2001 found that SDWIS/FED contained only 65% of all health-based violations and 23% of all monitoring and reporting violations that should have been reported. While the largest burden for improving the quality of data in SDWIS/FED falls on the states (and regions for Indian country), it is important that EPA also do its best to ensure data are reported accurately and completely.

Compliance Assistance

Regions should enter the number and type of planned compliance assistance activities and outcome measurement projects into the compliance assistance module in ICIS and report all on-site assistance visits using the CACDS. The regions should have a goal of reporting 100% of the following information into either SDWIS/ODS, ICIS, or on a CACDS, in accordance with this guidance.

- Number of public water system SNCs that return to compliance as a result of an on-site compliance assistance visit and which were not the subject of a reported enforcement follow up activity.

- Number of small and tribal public water systems in violation that receive direct compliance assistance, subsequently return to compliance, and are not the subject of a reported enforcement follow up activity.

- Number of public water systems that receive compliance assistance.

Public Water System Supervision (PWSS) Program

Regions, states, and tribes with primacy are expected to ensure that all required data is entered or uploaded into SDWIS/ODS, including federal facilities as applicable. Regions with direct implementation programs, including those with authority for implementing the drinking water program in Indian country, are expected to enter the data. If regions directly implement any of the new drinking water regulations, they must ensure that the required data is in SDWIS/ODS. Regions should review reports as appropriate to ensure changes to data are successfully accepted in SDWIS/ODS. All PWSS federal enforcement cases should be entered into both ICIS and SDWIS/ODS. Regions should report sanitary surveys into ICIS as compliance assistance activities.

All federal inspections, including those that previously reported manually, must be entered into ICIS in FY 2008. Separate guidance on sanitary surveys is in a December 9, 2005 memorandum from James Edward and Steve Heare directing the regions to report sanitary surveys into ICIS as compliance assistance activities.

PROGRAM OVERSIGHT

Public Water System Supervision (PWSS) Program

To ensure adequate program oversight, regions should review data in the SDWIS/ODS and review other information on compliance available to the region.

In evaluating regional performance, OECA will look at:

- the number of SNCs identified in the fixed based SNC/Exception list
- the number of SNCs addressed from fixed base SNC/Exception list
- the number of SNCs addressed from quarterly data which were identified as higher priority

Underground Injection Control (UIC) Program

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

C. Requirements: Federal Insecticide, Fungicide and Rodenticide Act Program

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

A major focus of FIFRA is providing assistance, training, and oversight to states and tribes carrying out FIFRA related enforcement under cooperative enforcement agreements. This includes, as appropriate, authorizing state and tribal inspectors to conduct FIFRA inspections on behalf of EPA and providing training and grants oversight. Regions should refer to the Federal Facilities section (Section I) for guidance on including federal facilities in core program activities, where applicable.

EPA and the public rely on pesticide manufacturers and formulators to provide accurate information about pesticides and associated risks. Unregistered and ineffective antimicrobials, as

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

In FY 2008, implementing the recommendations of the Worker Protection Standard Program Review Report will be a program focus. In addition, two new areas will be priorities for the pesticide compliance and enforcement program. These are implementation of the recently promulgated pesticide container/containment rules, and endangered species enforcement. Ensuring that the Program Assessment Rating Tool (PART) measures are fully integrated into the pesticide enforcement cooperative agreements will continue to be a significant regional and headquarters focus.

COMPLIANCE ASSISTANCE *(Sub-Objective 5.1.1)*

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

COMPLIANCE INCENTIVES *(Sub-Objective 5.1.2)*

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

MONITORING AND ENFORCEMENT *(Sub-Objective 5.1.3)*

Regions should work with pesticide state lead agencies and tribal pesticide agencies to target and conduct inspections and investigations to support the pesticide focus areas identified above. Regions should ensure inspection coverage in areas where there is no coverage through EPA enforcement cooperative agreements.

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

Performance Expectations

Commitment FIFRA-FED1: Project regional (federal) FIFRA inspections.

PROGRAM OVERSIGHT

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

The FIFRA Cooperative Enforcement Grants are covered by the new OMB requirement to include a standardized template for reporting results in state grant agreements. The templates are for use by the regions to report their state and tribal grant results. A copy of the FIFRA template is in Attachment B.

*Please refer to the Federal Facilities Enforcement and Compliance core program narrative in **Section I** for additional core program requirements.*

D. Requirements: Emergency Planning and Community Right to Know Act (EPCRA) Programs

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

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

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

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Monitoring

EPCRA 313

Regions are encouraged to use screening and targeting tools to focus limited federal resources on national and regional priority areas. Targeting facilities that did not report and meet reporting criteria is a general area of emphasis. In the EPCRA 313 program, regions are expected to conduct at least 4 on-site Data Quality inspections each fiscal year as part of their overall inspection commitment. In the EPCRA 313 program, regions are expected to conduct at least 20 inspections each fiscal year as part of their overall inspection commitment.

Performance Expectations

Commitment EPCRA01: Number of federal EPCRA data quality inspections.
Commitment EPCRA02: Number of federal EPCRA 313 inspections.

EPCRA 304/311/312 CERCLA 103

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

Enforcement

EPCRA 313; EPCRA 304/311/312 CERCLA 103

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

E. Requirements: Toxic Substances Control Act (TSCA) Program

The Agency's TSCA program consists of four major elements: "core TSCA"; PCBs; TSCA Asbestos, which includes , Worker Protection Standards, the Model Accreditation Plan program and other requirements; and lead-based paint. Title III Radon activities will not be covered in this section

COMPLIANCE ASSISTANCE (Sub-Objective 5.1.1)

Compliance assistance is an important focus for the TSCA AHERA program in FY 2008. The EPA-supported Schools Compliance Assistance Center will be the primary vehicle for providing compliance assistance, with regions participating where resources permit. For lead-based paint, as part of the integrated strategy efforts, regions will continue to work with the regulated community to provide compliance assistance at appropriate opportunities, such as home shows, meetings, and discussions with landlord associations. Inspectors will provide compliance assistance materials at inspections which will cover all aspects of the lead paint program.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

Lead-based Paint: As part of the integrated strategy, the lead paint program will continue to focus its work with the regulated community to meet the 2010 goals. Efforts for achieving a lead-safe environmental include voluntary actions on the part of the regulated community, compliance assistance to the regulated community, or when necessary negotiated settlements and enforcement actions.

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

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

MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

Core TSCA

Regions must stay current and informed of the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) and OECA's TSCA program priorities. Regions must track and prioritize tips and complaints and follow-up, as needed. Regions 2, 4, and 5 are also expected to follow-up on all referrals received from headquarters, states, tribes, and the public. Follow-up includes evaluating the tip or complaint to determine the appropriate next step. Minimally-invested regions (all regions other than 2, 4, and 5) are to refer tips and complaints to the Core TSCA Enforcement Center for follow-up, and to respond to questions from the regulated community. Under special circumstances all regions may need to conduct limited inspections as resources allow, and to work with the Bureau of Customs and Border Protection on the import/export program.

For those regions (other than 2 and 5) who chose to continue to invest additional resources

in Core TSCA compliance and enforcement, the Core TSCA Enforcement Center will assist in targeting inspections, but the region is expected to provide legal and technical enforcement case support, and either obtain additional information through federal investigation, show cause letter, subpoena if necessary and issue appropriate federal action as appropriate; or determine that follow-up is not necessary.

Performance Expectations

Commitment TSC01: Project the number of Core federal TSCA inspections for regions maintaining an investment in core TSCA (sections 4, 5, 8, 12 and 13).

PCBs

In FY 2008, the regions should use their enforcement resources to focus on phase out of PCBs as well as monitoring PCB storage and disposal facilities. As appropriate, regional PCB personnel should coordinate with waste program personnel to ensure that the transfer of Brownfield properties are in compliance with PCB rules, guidance, and policies. Using the Transformer Registration information, regions should target inspections toward users of high concentration PCBs and to identify facilities which failed to register. Enforcement follow-up to violations detected as a part of these inspections should promote, where possible, the retirement of PCB transformers through Supplemental Environmental Projects (SEPs). Tips and complaints should be followed-up as appropriate.

The regions must ensure that authorization agreements, which authorize employees of state and tribal governments to conduct inspections on EPA's behalf are in place with states/tribes that receive TSCA Compliance Monitoring grants for PCBs programs (except those states with identical laws and regulations). Regions must ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed according to the September 30, 2004 memorandum entitled *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA*. Also, please see the August 5, 2005 memorandum for the *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf.* In addition, regions must review inspection reports from states and tribes and provide feedback per the September 30, 2004 guidance. Feedback should address the quality of the inspection/reports and the action taken by the region.

During FY 2008, regions will be expected to continue: targeting disposal facilities every three years (i.e., inspect one third of the facilities in their region); responding to tips/complaints and environmental incidents involving PCBs; following up on food/feed contamination referrals; conducting oversight inspections; investigating building renovations where PCB caulking is found; and addressing regional PCB priorities. Regions should work with states/tribes operating under TSCA compliance monitoring grants to address these priorities as well as state/tribal priorities. Regions that award TSCA compliance monitoring grants to states/ tribes are reminded to submit mid-year and end-of-year grant evaluation reports to OC.

In order to improve the efficiency of PCB inspection data, the National Compliance

Monitoring Policy Branch in conjunction with Region 5 PCB inspectors and state of Indiana PCB inspectors developed an MS Access program for use on Tablet computers to collect on-site compliance monitoring data and prepare various PCB-specific forms and inspection reports. OECA strongly encourages the regions and states that inspect on behalf of EPA to conduct inspections using the PCB Inspection software and hardware. The final version of the software should be available for distribution to the regions and states by July 1, 2007.

Performance Expectations

During FY 2008, regions should continue to inspect 33% of regional PCB commercial storage and disposal facilities. If the region will not inspect 33% of the commercial storage and disposal facilities, the region must explain its decision in the comments field. In addition, HQ requests that the regions report the total number of planned PCB inspections other than those at commercial storage and disposal facilities in the comment field of TSC03 in the Annual Commitment System.

Commitment PCB01: Inspect 33% of the PCB commercial storage and disposal facility universe.

TSCA (asbestos)

Compliance assistance will be an important focus of OECA activity for the TSCA AHERA federal program in FY 2008 with a secondary focus on traditional enforcement as appropriate. For FY 2008, the regions are expected to ensure inspection coverage in each state by either EPA, SEE, or state/tribal inspectors. In addition, the regions will continue to track and prioritize tips and complaints. If the regions receive a complaint containing allegations which provide a reasonable basis to believe that a violation has occurred, the TSCA statute, Subchapter II, Asbestos Hazard Emergency Response, Section 2647 – Enforcement, paragraph (d) Citizen complaints states:

> . . . .If the Administrator or Governor receives a complaint under this subsection containing allegations which provide a reasonable basis to believe that a violation of this chapter has occurred, the Administrator or Governor shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

Regions are also expected to follow-up on all referrals Follow-up includes evaluating the tip or complaint to determine the appropriate next step, and either: 1) refer the tip or complaint to a state/tribe as appropriate and track it through resolution; or 2) obtain additional information, e.g., through phone calls, and inspect, if appropriate. Special attention should be given to tips alleging asbestos contamination at schools. Inspections should address charter schools, public schools, private schools, and religious schools. Inspections may be conducted for the Model Accreditation Plan, Worker Protection Standards, and other Section 6 regulations. In addition, the regions have flexibility to

determine the appropriate number of oversight inspections. Also, regions that award TSCA compliance monitoring grants to states/tribes are reminded to submit mid-year and end-of-year state grant evaluation reports to OC.

Where applicable, the regions should encourage states/tribes to apply for the "waiver" program. The regions must ensure that authorization agreements, which authorize employees of state and tribal governments to conduct inspections on EPA's behalf are in place with states/tribes that receive TSCA Compliance Monitoring grants for TSCA Asbestos (non-waiver states only). Regions must ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed according to the September 30, 2004 memorandum entitled *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA.* Also, please see the August 5, 2005 memorandum for the *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf.* In addition, regions must review inspection reports from states and tribes and provide feedback per the September 30, 2004 guidance. Feedback should address the quality of the inspection/reports and the action taken by the region.

Performance Expectations

During the FY 2008 national guidance period, HQ is asking the regions to ensure compliance monitoring activities are undertaken in each state and in Indian Country. The compliance monitoring activity can be met by regional inspections or having states inspect on behalf of the regions. HQ will rely on the regions to determine the number and mix of compliance monitoring activities to be conducted in each state.

Commitment ASB01: Report the number of federal TSCA asbestos inspections. HQ requests the regions report the number of AHERA inspections to be conducted by states in support of compliance monitoring activities, by state, in the comment field of TSCA05.

If the region cannot perform some level of compliance monitoring coverage in each state, whether it is the region or the state on behalf of the region, the region must provide an explanation based on facts and provide a rationale for:

- How the compliance monitoring TSCA resources will be redirected (e.g., regional or state priority facilities);

OECA will discuss with regional toxics managers at national meetings, scheduled conference calls, and one-on-one conversations with individual regions the commitments, mid- and end-of-year results, and inspection priorities.

Lead-Based Paint Program

In 2000, the President's *Task Force on Environmental Health Risks and Safety Risks to Children* established the national goal to, by 2010, "eliminate lead paint hazards in housing where children under six live," through federal grants and private funding to identify and eliminate lead paint hazards, outreach and public education, and "enforcement of lead safety laws and regulations." In addition, the Agency has authority to address lead paint hazards in other regulated property, including child-occupied facilities.

The national lead-based paint (LBP) compliance monitoring and enforcement program will implement an integrated strategy focused on the outcome of obtaining abatement (permanent elimination) of LBP hazards in housing and other regulated properties**.** LBP abatement may be obtained through a variety of vehicles, including compliance assistance or other "beyond compliance" activities, Supplemental Environmental Projects in administrative settlements; injunctive relief in judicial actions; and joint or parallel enforcement with other federal or State/Tribal/Local agencies that have independent authority to compel abatement.

Each Region's integrated strategy should encompass both a coordinated intra-agency compliance assistance, incentive, compliance monitoring, enforcement, and State/Tribal grant oversight activities; and interagency coordination with Federal/State/Tribal/Local authorities, as appropriate. The strategy should be based on targeting for lead poisoning "hot spots," based on known or apparent LBP hazards, such as elevated blood-lead levels (EBLLs) in young children, outstanding LBP hazard abatement orders, and the age and condition of regulated properties. To facilitate targeting, the Region should strive to maximize interagency partnerships for information-sharing, referrals, and tips and complaints, such as with the Centers for Disease Control, State/Tribal/Local health and housing agencies, and other entities

Supporting the Agency's goal to eliminate LBP hazards, the Region should allocate its LBP compliance and enforcement resources (including Senior Environmental Employees) to the respective program elements – Sections 1018, 402 and 406(b) -- based upon the Region's assessment of the most significant types of LBP hazards throughout the Region.

Performance Expectation

In states without authorized Section 402 programs, regions should conduct targeted inspections of training providers and inspect work sites; this activity should be briefly described in the work plan submission as rationale for any trade-offs with available compliance and enforcement resources.

Commitment LED01: Number of 1018/402/406 federal inspections.

PROGRAM OVERSIGHT

OECA and the regions should evaluate the overall effectiveness of the federal TSCA compliance and enforcement program to ensure the most efficient and effective utilization of resources possible. These analyses should address whether TSCA compliance and enforcement activities address program priorities; utilize effective targeting strategies; identify and take appropriate enforcement action on violations; prioritize and track tips and complaints; assess appropriate penalties; have written procedures/guidelines consistent with Agency policy to guide activities; have adequate QA/QC programs in place; offer adequate inspector training; inspectors comply with the EO 3500.1 training requirements; and accurately report data to the appropriate data systems in a timely manner.

The TSCA Asbestos Grants and the TSCA Lead Grants are covered by the OMB requirement to include a standardized template for reporting results in state grant agreements. The templates are for use by the states to report their state grant results. A copy of the TSCA Asbestos Grants and the TSCA Lead Grants template are in Attachment B.

Please refer to the Federal Facilities Enforcement and Compliance core program narrative in ***Section I*** *for additional core program requirements.*

F. Requirements: Clean Air Program

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

For the FY 2008 planning cycle, the MACT and NSR/PSD programs will continue as priorities, and the discussion of, and performance expectations for, those programs will be in the performance based strategies referenced in Section II - National Priority Activities.

For the remaining programs, the regions should continue to maintain a minimum level of activity consistent with the resources available for implementing the program and Agency policies, monitoring the level and quality of effort by the delegated agencies, and participating in region-specific initiatives that may require greater EPA involvement. In designing these programs, the regions should take into consideration all aspects of the program (e.g., compliance evaluations, applicability determinations, assistance, incentives, enforcement), and focus on those activities that will yield the greatest benefit and are not duplicative of efforts by delegated agencies. Regions should conduct the SRF in each of their states and territories by the end of FY2010. Regions should coordinate SRF and CMS reviews to maximize efficiencies and avoid any duplication of effort. Regions should also ensure that delegated programs implement programs consistent with delegation agreements and that states meet grant work plan commitments**.** Both the SRF and the

CMS require the regions to evaluate whether states/locals meet their commitments, and in those cases where states/locals did not, determine why not, and make adjustments for the following year. Regions should use available SRF data when conducting CMS analysis of state/local compliance monitoring programs as a whole including whether: adequate inspector training is available; an appropriate mix of compliance monitoring techniques is being used; all available data is being used; and regions are able to quantify the impact of the compliance monitoring program on parameters such as compliance rates; specific and general deterrence; and moving beyond compliance.

COMPLIANCE ASSISTANCE (Sub- Objective 5.1.1)

Compliance assistance is an appropriate tool, in particular, when there are new rules, sector-specific compliance problems, and sectors with a preponderance of small businesses.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

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

COMPLIANCE MONITORING AND ENFORCEMENT (Sub-Objective 5.1.3)

NSPS/NESHAP/MACT PROGRAMS

Compliance evaluations should be conducted at Title V major sources and synthetic minor sources that emit or have the potential to emit emissions at or above 80% of the Title V major source threshold (80% synthetic minors) consistent with the CMS, and the biennial plans developed by the delegated agencies. Emphasis should be placed on ensuring that delegated agencies provide and maintain an accurate universe of sources subject to the policy; develop facility-specific CMS plans; maintain records of compliance monitoring activities; and report all Minimum Data Requirements (MDRs) in a timely manner consistent with Agency policies, and the business rules and Information Collection Request (ICR) of AFS. Once an evaluation is completed, and a compliance determination is made, all evaluations should be reported into the national database of record, AFS, within 60 days per the 2005 AFS ICR. The results of evaluations conducted by either the regions or delegated agencies should not be held until the end of the fiscal year and input into the data system all at once. Regions should encourage those states and tribes with program approval, which include a step in the evaluation process to ensure the evaluation is completed before reporting the information into AFS, to initiate this step shortly after the evaluation is completed. States and tribes should not wait to complete and report the evaluation until the end of the fiscal year.

Separate from investigations associated with the PSD/NSR Priority and discussed in the section on National Priority Activities, regions should continue any on-going investigations, and initiate new ones as appropriate. These activities should be reported in AFS. This is a minimum data requirement in the AFS ICR.

During the FY2008 time frame, special emphasis should be placed on implementing the National Stack Testing Guidance. The guidance is a response to a report by the OIG which criticized the Agency for not issuing national guidance on stack testing, or providing sufficient oversight of state and local stack testing programs. The OIG concluded that this lack of guidance and oversight had an adverse effect on the use of stack testing as a tool in determining compliance.

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

During the first year of implementation, this guidance served as interim guidance to provide OC and the regions with an opportunity to evaluate its usage and monitor any potential problems that may arise as individual states/locals or tribes applied the provisions. The guidance became final on September 29, 2005, and reflects any necessary changes stemming from the one-year evaluation. Regions should ensure that delegated agencies are familiar with the Stack Testing Guidance, and implement their programs consistent with the guidance.

Performance Expectations:

Consistent with the CMS, the regions should provide projections for: (1) the number of Full Compliance Evaluations (FCEs) at Title V majors, 80% synthetic minors, and other sources (as appropriate) by region and state; (2) the number of Partial Compliance Evaluations (PCEs) to be conducted by the regions (this is a minimum data requirement); and (3) the number of state PCEs to be conducted that were negotiated between the region and the state in the biennial plan (i.e., where states negotiate PCEs in lieu of conducting a certain number of FCEs at Title V majors or 80% synthetic minors). The state numbers should include delegated local agencies as appropriate. The default in CMS is 50% of the universe for majors, and 20% of the universe for 80% synthetic minors per year. This default applies only to the state projections. However, this default may vary from state-to-state depending on negotiations between regions and states under the CMS.

Commitment CAA 01: Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by region per year;
Commitment CAA 01.s: Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by state per year;
Commitment CAA 02: Number of Full Compliance Evaluations to be conducted at the 80% synthetic minors, and other sources (as appropriate) by region per year;
Commitment CAA 02.s: Number of Full Compliance Evaluations to be conducted at the 80% synthetic minors, and other sources (as appropriate) by state per year;

Commitment CAA 03: Number of Partial Compliance Evaluations (PCEs) to be conducted by the regions. This is a minimum data requirement;
Commitment CAA 03.s: Number of PCEs to be conducted by the states that were the result of the negotiation process for the year (could be the result of redirecting resources from FCEs to PCEs). This is a minimum data requirement.

If the states/locals or tribes cannot meet the above commitments, the regions must provide a written explanation that should include the following:

- Information on how the compliance monitoring air resources will be redirected (e.g., national priority facilities, state air priorities);
- How majors and/or 80% synthetic minors will otherwise be monitored; and
- Why it is not necessary to evaluate specific facilities or source categories subject to the recommended minimum frequencies.

This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

Commitment CAA05: Regions should project the number of investigations to be initiated in FY2008. Investigation projections should be provided by air program (e.g., MACT, NSPS).

The regions should enter both initiated and completed investigations into AFS, and identify the targeted air program(s). This is a minimum data requirement. OECA uses this information to evaluate the overall health of the stationary source compliance monitoring program by comparing the number of FCEs, PCEs, and investigations. The region must provide an explanation if no activity is projected in this area. This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

The following activities are critical components of the core program. OECA will continue to collect and analyze information on these activities from either AFS, ICIS, or through SRF and CMS evaluations. The regions should be prepared to discuss any concerns or questions arising from the collection and analysis of the data.

- Regions should report 100% of the compliance results of all FCEs and PCEs into AFS within 60 days per the 2005 AFS ICR, and if feasible, in the next regularly scheduled update of AFS after an evaluation is completed and a compliance determination is made.
- Regions should ensure that 100% of the delegated agencies report the compliance results of all FCEs and negotiated PCEs into AFS within 60 days per the 2005 AFS ICR, after a compliance determination is made.
- Regions should negotiate facility-specific CMS plans with 100% of delegated agencies, periodically evaluate progress, and work with delegated agencies to revise the plans as

necessary.

- Regions should utilize and encourage delegated agencies to use stack tests as a means of determining compliance. Regions, delegated states/locals, and tribes should report 100% of the stack tests and the results (pass/fail) in AFS when a compliance determination has been made.

Title V Operating Permits Program

Regions should continue to review Title V permits, both new ones as well as renewals, to ensure that they have adequate monitoring provisions consistent with the statute, underlying regulations, agency policies and judicial decisions. Although regions are no longer required to review all Title V certifications, they are still responsible for reviewing a subset of certifications, and ensuring that states/tribes/locals review them pursuant to the CAA CMS. In addition, they are responsible for ensuring that all permit program MDRs are entered into AFS in a timely manner.

Performance Expectations:

Regions should review and comment as appropriate to the permitting authority on the compliance and enforcement provisions of a subset of the initial Title V permit applications received each year, as well as all renewals. Regions should ensure that Title V permits do not shield sources subject to a pending or current CAA enforcement action or investigation, and that draft Title V permits include appropriate placeholder language for the applicable requirements at any affected units. Further, regions should ensure that draft Title V permits include compliance schedules addressing consent decree requirements. OECA will collect information and discuss these activities with regional air managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

Regions, states and tribes with program approval should report results of 100% of certification reviews consistent with CMS and the MDRs identified for the program.

Stratospheric Ozone Protection

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

Performance Expectations:

Regions should include evaluations of CFCs and other ODS as part of routine FCEs to the extent the regulations apply. This does not apply to states since this program is not delegable. The regions must provide an explanation if no CFC or other ODS evaluations will be conducted. OECA will collect information and discuss these activities with regional air compliance/ enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

SECTION 112(r) RISK MANAGEMENT PLANS (RMPs and General Duty Clause)

Although section CAA 112(r) is a Clean Air Act authority, responsibility for compliance and enforcement varies from region to region, and may not reside with the regional division responsible for the air compliance and enforcement program. Past compliance and enforcement efforts in section 112(r) focused on ensuring that regulated sources submit the required Risk Management Plans. Regions currently focus on ensuring that submitted plans are adequate and meet the regulatory requirements. Headquarters will continue to provide support in this area. In light of continuing concerns regarding public safety, regions should consider the following factors in focusing their compliance monitoring efforts:

- significant quantities of chemicals of concern in a process;
- proximity to population centers of facilities that have significant quantities of chemicals of concern;
- accident history of facility or industrial sector.

Performance Expectation:

Regions should conduct CAA 112 (r) RMP inspections and may include periodic 68.220 audits as part of an overall program to determine compliance. Regions should perform inspections at 5% of the total number of regulated facilities in the region during FY 2008. If the program is delegated to a state, tribal or local agency, the regions should work closely with the delegated agency to avoid duplication of effort. OECA will collect information and discuss these activities with regional managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

Commitment CAA11: Conduct inspections at 5% of the total number of facilities in the region required to submit RMPs.

ENFORCEMENT

Federal enforcement will be considered where delegated agencies fail to take appropriate action. In addition, regions should take appropriate federal enforcement actions in situations where federal involvement could be particularly helpful in bringing the matter to a successful and environmentally beneficial resolution (e.g., a company with violations in more than one state or

Indian reservation, transboundary issues, recalcitrant violators, etc.), or is essential to ensure fair and equal environmental protection mandated by law.

For all cases newly listed in accordance with the "Policy on Timely and Appropriate Enforcement Response to High Priority Violations (HPVs)," regions should adhere to the requirements of the Policy, and ensure that all MDRs are reported in AFS in a timely manner. Regions should work with delegated agencies to ensure that they are familiar with the HPV Policy, and implement their programs consistent with the guidance. OECA will collect information and discuss these activities with regional air compliance/enforcement managers during SRF reviews, national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

Performance Expectations:

The following activities are critical components of the core program. OECA will continue to collect and analyze information on these activities from either AFS or ICIS. The regions should be prepared to discuss any concerns or questions arising from the collection and analysis of the data. The regions must provide an explanation if the region will not be undertaking any of these activities. This explanation will be discussed with regional managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

- Evaluate and bring to closure 100% of any self-disclosures received by the region;
- Settle or litigate cases issued in years prior to FY2008 and ensure investigation and issuance of appropriate action for any open tips, complaints, or referrals received by EPA;
- Exercise 1997 clarified penalty authority against federal agencies for CAA violations in appropriate circumstances;
- Report 100% of MDRs accurately and in a timely manner in AFS consistent with the HPV policy and ensure that delegated agencies do the same.

DATA QUALITY AND REPORTING

Data is an integral part of the CAA compliance and enforcement program; therefore, it is essential that regions and delegated agencies enter complete and accurate information into the national database in a timely manner. Complete, accurate, and timely data is necessary for EPA, delegated agencies, and the public to evaluate programs and institute corrections. For a complete list of MDRs for the program, please consult the CMS, the HPV Policy, and the ICR for the program. A summary of the requirements is on the following website: http://www.epa.gov/compliance/planning/data/air/mdrshort.pdf. The region must provide an explanation if no activity is projected in this area.

As stated previously, once an evaluation is completed and a compliance determination is made, all evaluations should be reported as soon as practicable, and if feasible, in the next regularly scheduled update of AFS. The results of evaluations conducted by either the regions or delegated agencies should not be held until the end of the fiscal year and input into the data system

all at once. Regions should work with delegated agencies to ensure that agencies are familiar with the data aspects of the CMS, the HPV Policy, and the ICR, and implement delegated programs consistent with these policies. This is critical since the structure of the air program is different than other media programs in that the type and timing of compliance data that must be reported into the national database are not specified by statute or regulations, but through Agency policy and an ICR for the program. Agreements with delegated agencies to provide complete, accurate, and timely data should be incorporated in documents such as SEAs, PPAs, or Section 105 grant agreements.

Performance expectations:

The following commitments need to be undertaken by the regions during the period covered by this guidance.

Commitment CAA 16: Regions should ensure that delegated agencies have written agreements to provide complete, accurate, and timely data consistent with the CMS, HPV Policy, and the AFS ICR; identify the agreement; and provide copies of the relevant language.
Commitment CAA 17: Regions and delegated agencies should enter all MDRs in AFS consistent with the Agency policies and the ICR. If for some reason a delegated agency does not agree to enter the MDRs, the region is responsible for ensuring that the data is entered into AFS in a timely manner. If the region is responsible for entering state/local/tribal data, identify the agency.

The regions must provide an explanation if the region will not be undertaking these activities. This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

PROGRAM OVERSIGHT

Regions should review state CAA stationary sources' compliance and enforcement programs under the SRF, and in coordination with the CMS. Consistent with the SRF, the CMS, and HPV Policy, regions should assess annually the performance of compliance monitoring programs and enforcement activities against the negotiated and agreed upon grant work plans to ensure that commitments are met. In addition to the Framework review, regions should conduct more in-depth CMS analyses of the overall CAA compliance monitoring programs periodically to ensure the most effective and efficient use of resources possible. These evaluations should assess trends; recognize successes as well as document areas for improvement; and provide concrete recommendations for improvement. Evaluations should be based on activities such as conference calls, the Watch list, grant workplan reviews, file audits, oversight inspections, and management and staff interviews. Results should be documented in a written report and provided to Headquarters. For further guidance in this area, see the SRF Overview and Implementation Guide, and the CMS and the HPV Policy. Also, see the sections on EPA/State relations and core program activities.

Performance Expectations:

The following commitments need to be undertaken by the regions during the period covered by this guidance. These commitments are critical in light of the Inspector General's findings and recommendations for the air compliance and enforcement program and the need to periodically evaluate implementation of the CMS.

Commitment CAA19: Consistent with the CMS, regions should conduct at least one in-depth evaluation of a delegated program per year and provide the written results to Headquarters. The delegated agency should be identified.

The regions must provide an explanation if the region will not be undertaking any of these activities. This explanation will be discussed with regional air compliance/enforcement managers during national meetings, scheduled conference calls, and one-on-one conversations with individual regions.

*Please refer to the Federal Facilities Enforcement and Compliance core program narrative in **Section I** for additional core program requirements.*

G. Requirements: Resource Conservation and Recovery Act (RCRA) Program

RCRA Hazardous Waste Subtitle C Program

EPA is committed to ensuring that hazardous waste is managed in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environment. To help ensure this, regions and states should capture the outcomes. All identified non-compliance with RCRA Subtitle C should be addressed by the Agency in accordance with its policies governing enforcement and compliance monitoring.

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities include all of Indian country. Federal compliance assurance and enforcement activities complement state activities, where and as appropriate. State activities are to be monitored through various mechanisms including the implementation of the SRF, the Watch List, and the annual commitment system grant reviews. Regions should refer to the federal facilities Section I of this guidance for information on how to include federal facilities in core program activities where applicable.

Core Program Elements

- In general all RCRA inspections identified in this guidance should be thorough inspections that cover the complete facility. For example, a facility that is a TSD, generator and transporter should have a Compliance Evaluation Inspection (CEI) that covers all of the requirements not just the TSD requirements to be counted as an inspection for purposes of meeting the commitments.

- Inspections of treatment, storage and disposal facilities, as required under RCRA §3007(e), and state and local government operated treatment, storage, and disposal facilities, as required under RCRA §3007(d), should verify compliance with the following requirements established as standards per RCRA §3004(a) :

  - maintaining records of all hazardous waste which is treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
  - satisfactory reporting and compliance of the manifest system;
  - treatment, storage, or disposal of all waste received by the facility in accordance with the law;
  - establishing contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;
  - training for personnel;
  - financial responsibility.

- Inspections of generators should verify compliance with the following requirements established as standards per RCRA § 3002(a):

  - proper characterization of the hazardous waste;
  - furnish information on the general chemical composition of hazardous waste to persons transporting, treating, storing and disposing of such wastes;
  - record keeping on the management and disposition of waste;
  - proper labeling and identification of waste for storage, transport, and disposal;
  - use of proper containers, tanks and drip pads for the hazardous waste;
  - use of the manifest system and all other means necessary to assure that hazardous waste is sent to the appropriate treatment, storage and disposal facility; and
  - submission of reports to the Administrator reporting the waste generated.

- Inspections of transporters should verify compliance with the following requirements established as standards per RCRA § 3003(a):

  - record keeping;
  - properly labeled waste;
  - use of the manifest system;
  - proper management of hazardous waste during transportation;
  - hazardous waste delivered to treatment, storage, and disposal facilities that

are permitted by law to take such waste.

RCRA Underground Storage Tank Subtitle I Program

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

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

The goal of state and federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement activities will complement and provide oversight of state activities, where and as appropriate. Federal compliance assurance and enforcement activities, however, cover all of Indian country because RCRA precludes EPA from authorizing tribal UST programs. Regions should, therefore, implement the UST program in Indian country.

NOTE: The UST Compliance Act of 2005 includes a number of new provisions regarding compliance monitoring and enforcement. The statute requires EPA and the state RCRA Subtitle I programs to conduct RCRA 9005(c)(1) inspections at 100% of the universe of underground storage tanks (USTs) that were not inspected from December 22, 1998 through August 8, 2005, and to complete these inspections by August 8, 2007. In addition, all USTs must be inspected every three years thereafter. EPA established a workgroup to produce guidance on meeting this requirement, and additional guidance will be forthcoming. For FY2008, regions should also focus on implementing the "Strategy for an EPA/Tribal Partnership to Implement Section 1529 of the Energy Policy Act of 2005." http://www.epa.gov/oust/fedlaws/Tribal%20Strategy_080706r.pdf.

Regions should refer to the federal facilities section of this guidance (Section I) for guidance on including federal facilities in core program activities where applicable.

COMPLIANCE ASSISTANCE *(Sub-objective 5.1.1)*

RCRA Hazardous Waste Subtitle C Core Program

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

RCRA Underground Storage Tank Subtitle I Program

Investments in outreach and assistance should be strategically focused (e.g., persons operating facilities in Indian country and persons owning small businesses with compliance problems).

COMPLIANCE INCENTIVES *(Sub-objective 5.1.2)*

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

MONITORING AND ENFORCEMENT *(Sub-objective 5.1.3)*

RCRA Hazardous Waste Subtitle C Core Program

The RCRA hazardous waste core program includes the compliance monitoring activities set forth in Part I and II below. Both state and federal compliance monitoring activities will be required in implementing the activities in Part I (i.e., maintaining the annual level of inspections of treatment, storage, and disposal facilities). To ensure a level playing field and oversight of state compliance assurance and monitoring activities, regions should utilize the tools available, such as the SRF, OTIS management reports, and the Watch List to monitor state performance, and also maintain a federal presence in the hazardous waste core program, including program implementation in Indian country, conducting the compliance monitoring activities set forth in commitments RCRA01 and RCRA02 below. Part II sets forth the requirement of Federal only inspections.

In light of continuing concerns regarding threats to human health and the environment posed by improper management of hazardous waste, regions and states should focus their compliance monitoring efforts on the following:

- never inspected LQG generators;
- facilities that are the subject of citizen complaints;
- non-notifier facilities believed to generate hazardous waste;
- persons that generate, transport, treat, store, or dispose of significant quantities of hazardous wastes, in particular those in proximity to population centers or environmentally sensitive areas; and
- repeat violators.

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

All efforts should adhere to the guidelines below.

Performance Expectations

The states and regions should work together to determine the appropriate mix of federal and state compliance monitoring activities to meet hazardous waste core program activities. Regions should work with tribes to determine the appropriate range of compliance monitoring activities in Indian country. In making determinations, each region should examine the compliance status of facilities within the region. For facilities that are multiple types (e.g. a facility that is a TSD, generator, and/or transporter), a CEI is deemed to be complete only when all aspects of that facility have been completed. Additionally, if a facility is a TSD as well as a generator and/or transporter, it is counted as a TSD for universe coverage.

Part I. Combined State and Federal Core Activities

A. Statutory mandated inspections -

– Treatment, storage and disposal facilities: Inspect at least once every two years each operating treatment, storage, and disposal facility, as required under RCRA §3007(e), i.e., 50% of TSDF universe annually. This is a coverage commitment so multiple inspections of the same facility count as only one inspection. For RCRA01 and RCRA01.s, commitment levels are based on the RCRAInfo operating universe for TSDFs. Pursuant to RCRA Section 3007(e), TSDFs must be "thoroughly" inspected (i.e., a compliance evaluation inspection for operating TSDs).

Commitment RCRA01: Project by state the number of TSDFs to be inspected by the region during the year. The regions must commit to inspecting at least 2 TSDFs in each state unless approval is obtained from headquarters to deviate from this requirement.

Commitment RCRA01.s: Project by state the number of TSDFs to be inspected by the state during the year.

Note: In addition to the CEIs expected for most of the TSDFs, groundwater monitoring evaluations (GMEs) should be conducted at any new or newly regulated land disposal facility, defined under §3004(k). Once it is determined that a groundwater monitoring system is adequately designed and installed, an operation and maintenance (OAM) inspection may become the appropriate ground water monitoring inspection. More frequent GMEs should be conducted in situations involving complex compliance or corrective action requirements; inadequate groundwater monitoring systems, significant changes to groundwater monitoring systems, and actual or suspected changes in local groundwater regimes. For TSDFs that are no longer in the operating universe but still have requirements to comply with, it is expected that the Regions/states will inspect (e.g., CEI, GME or OAM) those facilities every three years.

B. EPA mandated inspections –

– Annually inspect at least 20% of the large quantity generator (LQG) universe, so that the entire universe is inspected in five years unless approval to deviate from this requirement is approved as described below. The LQG universe is the total number of generators that reported in 2005 BRS (or if data in RCRAInfo is acceptable, the full enforcement universe for LQGs). This is meant to be a coverage commitment so multiple inspections of the same facility count as only one inspection. The regions are required to capture the outcomes of inspections and any follow-up enforcement in ICIS and are strongly encouraged to require the states to report the outcomes of their inspections and any follow-up enforcement actions in addition to reporting the number of inspections. These outcomes include approximate quantities of waste which were confirmed to being handled in accordance with the appropriate regulations and quantities of waste which were not being handled properly at the time of inspection but are now being handled properly because of complying actions taken by the regulated facilities and updating the generator status of the regulated facilities as necessary.

Commitment RCRA02: Project by state the number of LQGs to be inspected by the region during the year. The regions must commit to inspecting at least 6 LQGs in each state unless approval is obtained from headquarters to deviate from this requirement (generally a reduced commitment is allowed where the generator universe in the state is small). These LQG inspections should be compliance evaluation inspections (CEIs).[iv]

Note: The regions are encouraged to perform these inspections in the following areas: national priority sectors, to support state referrals, to address illegal recycling, entities with violations in more than one state, environmentally sensitive environments, areas with environmental justice concerns, and particularly recalcitrant violators.

Commitment RCRA02.s: Project by state the number of state LQGs to be inspected during the year under state authority. Inspections should be identified by inspecting agency. These inspections should be CEIs. Only one inspection per facility counts towards this coverage measure. At least 20% of the LQG should be covered by combined federal and state inspections unless approval is obtained to deviate from this requirement.

States may seek approval of pilot projects that allow for flexibility from the requirement in RCRA02.s to inspect 20% of the LQGs in order to improve the outcomes of their compliance assurance activities. To obtain flexibility, each state must present a plan to the Region which in consultation with Headquarters, will approve, ask for modifications or deny approval of the alternative plan. Complete guidance for developing an alternative plan will be issued under separate cover, but the alternative plan must include, as a minimum:

- A description of the overall level of effort (inspections) and how it will decrease from the standard 20% LQG inspection approach;

- The scope of the inspections to be conducted (e.g., the number of each type of generator to be

inspected, industrial sectors to be focused on, etc.);

- The expected outcomes from the alternative approach; and

- A plan to measure the actual outcomes to show that the flexible approach is or is not achieving the desired outcomes.

Part II. Federal Core Only

A. **<u>Statutory mandated inspections</u>** -

1. State or Local Government Operated Facilities

Commitment RCRA03: The regions are to annually inspect each treatment, storage or disposal facility operated by states or local governments as required under SWDA §3007(d). Pursuant to RCRA Section 3007(d), TSDFs operated by a state or local government for which a permit is required must be thoroughly inspected (i.e., generally a compliance evaluation inspection). The same type of RCRAInfo evaluations will be counted for this measure as is counted for RCRA01.

<u>RCRA Underground Storage Tank Subtitle I Program</u>

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

Recommended factors to consider in identifying facilities for inspection under the UST program include:

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

Enforcement

RCRA Subtitle C Hazardous Waste Program

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

RCRA Underground Storage Tank Program

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

Imminent and Substantial Endangerment

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

PROGRAM OVERSIGHT

RCRA Hazardous Waste Subtitle C Core Program

For evaluating program performance, EPA will utilize the SRF as one of the tools to conduct consistent reviews of the monitoring, enforcement, data quality, accurateness, and completeness in the RCRA Subtitle C program. EPA will utilize activities and results reported to RCRAInfo and ICIS to conduct regional and state reviews, so timely entry into the database is critical. EPA will review whether the regions and states meet the compliance monitoring commitments and whether the enforcement response, with regard to the type of enforcement tool utilized (e.g., administrative complaint, expedited settlement, NOV), the amount and type of penalties assessed, and the response time taken to address the identified non-compliance, is appropriate. In particular, as the EPA is looking to quickly address those violations that pose the greatest risk to human health and the environment, the Agency will also be looking at:

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

RCRA Underground Storage Tank Subtitle I Program

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

Please refer to the Federal Facilities Enforcement and Compliance core program narrative in ***Section I*** *for additional core program requirements.*

H. Requirements: Federal Activities Program

The Federal Activities core program for FY 2008 focuses on the following major areas:

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

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

NEPA / CAA §309 Review: Carry out EPA's responsibilities to review and comment on all major proposed federal actions to ensure identification, elimination, or mitigation of significant adverse effects.

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

Prepare environmental assessments (EISs or EAs) for new source National Pollutant Discharge Elimination System (NPDES) permits, for states/tribes without authorized NPDES programs; off-shore oil and gas sources, including permits for deepwater ports, EPA laboratories, and facilities; and Clean Water Act wastewater treatment plant grants.

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

NEPA CAA 309 Review and NEPA Compliance: Regions shall enter the results of their

§309 EIS reviews and NEPA compliance actions into the Lotus Notes EIS Tracking Database maintained by HQ OFA, and the SAAP system maintained by HQ OW, respectively. Additionally, regions will report to the Office of Federal Activities quarterly on the status of their 309 reviews and NEPA actions pursuant to OFA's GPRA reporting process.

Performance Expectations

- **Performance Measure:** 70 percent of the significant impacts identified by EPA during the NEPA review of all proposed major federal actions will be mitigated in order to preserve air and water quality, wetlands, aquatic and terrestrial habitats, and endangered species; to protect Environmental Justice communities; and to prevent degradation of valued environmental resources.

- **Performance Measure:** 90 percent of EPA projects subject to NEPA Environmental Assessment or Environmental Impact Statement requirements (water treatment facility project and other grants, new source NPDES permits and EPA facilities) result in no significant environmental impact.

MONITORING AND ENFORCEMENT *(Sub-objective 5.1.3)*

- Improve environmental performance and cooperation with Goal 6 of the U.S./Mexico Border 2012 plan (Regions VI and IX).
- Enhance enforcement, compliance, and capacity building efforts with Mexico and Canada relating to trans-boundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., PCBs, mercury), and other regulated substances (Border Regions).
- Improve performance of joint responsibilities along the border and points of entry into the United States by working with the Bureau of Customs and Border Protection (all regions).
- Fulfill International agreements and the Agency's RCRA obligations regarding notification of transboundary movement of hazardous waste (all regions).

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

Import/Export Program: All regions will review the permit and compliance status of U.S. receiving facilities in connection with 100% of the notifications for the import of hazardous waste they receive from HQ EPA and, based on the review, recommend consent or objection to notifications within the time periods allowed under applicable international agreements. Headquarters will process notifications for import and export of hazardous waste to ensure compliance with domestic regulations and international agreements; consent or object to import notifications and acknowledge consent/objection to export notifications; track the flow of hazardous waste both in and out of the United States based on manifests received from the Bureau of Customs and Border Protection; and conduct compliance monitoring and prepare memoranda of

referral for appropriate enforcement action. Upon receipt of the referrals, each region is responsible for determining whether or not to pursue an enforcement action against apparent violations of the law relating to transboundary movements of hazardous waste and must inform Headquarters of its decision and the ultimate outcome of each case.

In order to ensure a coordinated approach between EPA and the Bureau of Customs and Border Protection, regions must also alert headquarters regarding interactions with the Bureau.

I. Requirements: Federal Facilities Enforcement and Compliance Program

Background

As an integral process of EPA's on-going efforts to improve environmental compliance at the approximately 8,000 regulated federal facilities nation-wide, FFEO and the Regional Federal Facilities Program Managers/Staff developed this updated Core Program Guidance for FY 2008. The FY 2008 activities outlined below advance the goals outlined in the attached National Federal Facilities 2008 Program Agenda.

This Program Guidance identifies the nationally-coordinated activities under OECA's purview. This Guidance reflects that environmental stewardship and pollution prevention activities should largely be directed by others (including OPPTS) with more responsibility for these particular areas. Compliance assistance activities should be carefully targeted on a priority basis, and leveraged as much as possible, including through more partnerships with FedCenter and other arrangements. It is imperative to maintain an appropriate enforcement presence through a targeted inspection program, with swift and meaningful follow-up.

These activities serve as a baseline of priority activity from a national program perspective, in addition to which the regions may pursue their own regionally-identified priorities (including regional activity in support of the National Priorities, regional integrated strategies, geographically-based inspection "sweeps," etc.). As in the past, FFEO is willing to discuss changes necessitated by particular regional conditions. All Federal Facility activities will be measured using the relevant Conclusion Data Sheets and counted in achieving OECA's overall goal of a five percent increase in the pounds of pollution reduced, treated, or eliminated, and achieving a five percent increase in the number of regulated entities making improvements in environmental management practices.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

Compliance assistance remains a vital tool in abetting improved environmental compliance at federal facilities. With continuing budgetary constraints, it is imperative that compliance assistance efforts be leveraged through others and targeted efforts to support priority areas, which include the Federal Facility Integrated Strategy areas (listed below). With respect to Environmental Management Systems (EMSs), EPA supports continual improvements in federal EMSs, in particular by including Environmental Management Reviews (EMRs) in integrated strategies where appropriate, including EMS improvements in enforcement action settlements and providing EMS-related compliance assistance during multimedia and single media inspections at Federal facilities.

FedCenter, the multi-agency independent federal facility environmental compliance assistance and stewardship center, is pivotal to future collaborative compliance assistance efforts. FedCenter serves as the catalyst for increased cooperative compliance assistance efforts both within EPA and other federal partners. In FY 2007 federal agencies completed initial electronic submissions related to the EMS scorecard. In FY 2008, expanded use of FedCenter for EMS reporting activities is expected as a result of new requirements related to the new Executive Order issued on January 24, 2007.

Performance Expectations

- *Compliance Assistance Activities*

Each region shall conduct at least two compliance assistance activities (such as a seminar, training, workshop, education/outreach activity, etc.) to support the Integrated Strategy areas. These compliance assistance activities can be developed for delivery through the region or through FedCenter. If regions do not initially use FedCenter to deliver the assistance, FFEO strongly urges the regions to provide assistance to FedCenter to reach additional facilities.

Commitment FED-FAC01: Each region shall conduct at least two compliance assistance activities for Federal facilities to support the integrated strategy areas.

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

Performance Expectations

- *Multi-Media Inspections*

Each region must conduct two multi-media inspections to support the Integrated Strategy areas. Regions may substitute four single media inspections in lieu of one of their two multi-media inspections. FFEO encourages providing EMS-related compliance assistance during these inspections.

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

Commitment FED-FAC03: Each region must conduct two multi-media inspections to support

Integrated Strategy areas. Regions may substitute four single media inspections in lieu of one of their two multi-media inspections.

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

For FY 2008 OECA deleted an annual commitment for regions to inspect Federal RCRA treatment, storage, or disposal facilities required by RCRA Sec. 3007(c). This deletion does not eliminate the statutory annual inspection requirement for Federal TSDFs of RCRA Sec. 3007(c).

Single media inspections

Each region shall perform six single media inspections of Federal facilities to support the Integrated Strategy areas. These inspections are in addition to any single media inspection conducted under multi-media inspections above. FFEO encourages providing EMS-related compliance assistance during these inspections.

Commitment FED-FAC05: Number of Federal facility single media inspections to be conducted by EPA to support Integrated Strategy areas: CWA/NPDES Storm Water; Federal Laboratories; and Federal Underground Storage Tanks.

The inspections identified here are those that are unique to the Federal Facilities Core Program and are in addition to those outlined in other OECA core program sections. These inspections may, however, simultaneously satisfy inspection commitments required in other OECA core program guidance (e.g., the requirement for inspection of 100% of all major NPDES facilities).

ENFORCEMENT

FFEO strongly encourages the regions to take swift and meaningful enforcement actions to improve compliance at Federal facilities. For FY 2008, Federal Facility resources should focus on taking appropriate and timely enforcement actions, as defined within relevant media-specific policies for each federal facility 1) inspected as a result of FFEO's multi-media Inspection Initiative or 2) inspected as a consequence of FFEO's Integrated Strategies efforts. Where appropriate, FFEO advocates including EMS improvements and Supplemental Environmental Projects as part of enforcement action settlements.

Regions should continue reporting Federal facility CERCLA Records of Decision (RODs) into ICIS, first begun in FY 2006. It is especially important to report the substantial environmental benefits that result from those RODs. Guidance on calculating those benefits is in "Final Methodology for Estimating Superfund and RCRA Corrective Action Case Conclusion Data Sheet (CCDS) Environmental Benefits" dated December 12, 2003. Instructions for inputting benefit data into ICIS is in the ICIS Policy on Demand (IPOD) database.

INTEGRATED STRATEGIES

Integrated strategies that align enforcement, compliance, and stewardship activities toward maximum effect, help the Federal Facilities Program guide its actions toward greater environmental and health benefits. Integrated strategies include activities focused on (i) assisting facilities to achieve and maintain compliance, (ii) inspecting and monitoring compliance, and (iii) prosecuting enforcement actions to correct and deter non-compliance.

1. NPDES Storm Water Integrated Strategy

Stormwater: In FY 2008 FFEO will continue to implement its Federal Facility Stormwater Strategy as part of OECA's National Stormwater Strategy. The strategy focuses on construction activities at Federal facilities and integrates compliance assistance, compliance monitoring, and enforcement to improve stormwater compliance. In addition to providing compliance tools, including model Stormwater Pollution Prevention Plans (SWPPPs) and resources on FedCenter to regulated Federal agencies, EPA is also advocating increased inspections of Federal facilities to determine compliance with permitting requirements, Best Management Practices (BMPs), SWPPPs, monitoring, and record-keeping requirements.

Actions: For FY2008, the regions are asked to conduct as many Federal facility construction stormwater inspections as possible based on the targeting package sent to the regions in mid FY20 07. Working with a contractor, FFEO identified Federal construction projects and contracts awarded at federal agencies nationwide – with a special emphasis on those sites located near impaired water bodies.

Where appropriate, the regions are asked to pursue enforcement actions against both contractors and federal agencies for stormwater violations. (FFEO developed a suite of informal enforcement tools for use against federal agencies. The ordinary complement of enforcement tools remain available for use against private contractors). The use of SEPs – particularly those that prevent quantifiable amounts of pollution – is strongly encouraged.

Where possible, regions are further encouraged to work with FFEO to identify the underlying causes of federal facility noncompliance with stormwater. It is possible that through interagency negotiations, federal stormwater contracting language can be modified and increased use of Environmental Management Systems can be encouraged to prevent future noncompliance.

In addition, FFEO requests that regions ensure that the appropriate conclusion datasheets are filled out and entered in ICIS for each and every federal facility stormwater compliance assistance action, inspection, and enforcement action. Please utilize the outcome measures and the stormwater benefits calculators and report, at a minimum, the number of stormwater cases settled, pounds of sediment reduced, EPA-assisted inspections, training courses offered, and compliance assistance activities conducted.

2. Federal Laboratories Integrated Strategy

Background: EPA found a pattern of hazardous waste management problems in laboratories, including widespread and serious problems during its enforcement initiative involving

labs at universities and colleges. EPA discovered chemicals stored well past expiration dates, research laboratories with wastes in damaged containers, and laboratory staff pouring used chemicals into sinks and drains connected to public sewage systems. In several instances, serious mismanagement and storage of very dangerous waste chemicals and sometimes storage with incompatible chemicals occurred. The expected benefits of this initiative include: improved management of laboratory chemical substances and wastes to prevent injury to humans and a negative impact to the environment, and leveraging limited resources to improve laboratory compliance. In addition, this initiative provides an opportunity for the federal laboratories to more effectively manage resources by improving laboratory practices and environmental management.

Actions: EPA is planning to develop and offer Federal Laboratory compliance assistance. While there is a focus on assistance efforts in FY 2007, inspections at labs are always a possibility. FY2008 - 2009 will see increased emphasis on inspections/enforcement. We believe a combination of assistance, inspections, and enforcement related activities encourages Federal laboratories to make environmental compliance a vital part of their environmental management systems.

3. Federal Underground Storage Tank Strategy

Background: The new provisions of the Energy Policy Act of 2005 identify underground storage tanks (USTs) as a priority for enforcement, both in the private sector and in the Federal sector. For the Federal sector, Federal agencies are required to submit compliance status reports to Congress and the EPA Administrator by August 8, 2006. Based on the reported data, EPA and state regulatory agencies are required to ensure a strong inspection presence.

Actions: The UST Integrated Strategy created a reporting infrastructure on FedCenter for federal agencies to document UST environmental compliance status. These compliance reports are currently being reviewed and analyzed to determine appropriate compliance assistance and enforcement actions to be taken, such as targeted compliance assistance activities. The strategy encourages self-disclosure under EPA's Audit Policy. FFEO and the Regions will coordinate with state regulators in performing inspections consistent with the Energy Act and insure appropriate follow-up.

NOTE: Where a region demonstrates that their Federal facilities universe is not applicable for the Integrated Strategies, the regions are encouraged to work with FFEO through the Annual Commitment System to determine an appropriate substitute commitment.

DATA QUALITY AND REPORTING

At mid-year, FFEO will communicate the available data on Federal facility core program accomplishments to each respective region. To accomplish this review, FFEO will pull regional performance data (e.g., enforcement actions, multi-media and single media inspections, compliance assistance activities) from the available database of record to serve as a basis for discussion within the region. Some data (e.g., multi-media inspections) must be reported manually by the region in order for FFEO to acknowledge progress on certain commitments. At the end of the fiscal year,

FFEO will compile an end-of-the year summary to help evaluate the Federal Facility Program performance and document regional accomplishments (see specific reporting requirements of Attachment 5 of the March, 2006 Enforcement and Compliance Reporting Plan).

Use of Self-Audits at Federal Facilities under the ACS

EPA policy encourages regulated entities to conduct self-audits. If a region determines it is obtaining self-audit disclosures that are similar in scope and quality to an inspection, the region may request a reduction in their inspection commitments during the FY 2008 Annual Commitments (March-April, 2008) midyear modification process. In responding to such a request, FFEO would consult with other OECA program managers on the implications of such a change.

J. Requirements: Multimedia and Rapid Response Program

Environmental harm often occurs across air, water and land. The multimedia compliance and enforcement programs foster a comprehensive approach to the resolution of environmental problems because many facilities and companies operate in violation of more than one environmental statute. "Comprehensive" means compliance with the applicable provisions of all environmental laws used to achieve broad-based environmental benefits. A multimedia strategy to target and address compliance problems and environmental harm results in more effective overall management of a facility's or a company's environmental liabilities and is generally more cost-effective than bringing separate media-specific enforcement actions. Multimedia-focused activities, including enforcement actions, reflect the goals of federal innovation and underlie much of the Agency's enforcement reorganization. The Office of Civil Enforcement's (OCE) Special Litigation and Projects Division develops novel enforcement and compliance incentive approaches to address complex and emerging environmental problems.

The Agency was, and continues to be, successful in developing cases and initiatives that bring significant environmental results in all media. While it remains critical to be able to develop large scale, nationwide actions, capability for more rapid enforcement response is necessary in order to have a truly effective program. The objective of the Rapid Response Program is to "work backwards" from finding an environmental problem to reacting with targeted and streamlined enforcement approaches. The Office of Civil Enforcement's (OCE) Special Litigation and Projects Division (SLPD) will work with other Divisions and with the regions to identify cases where streamlined case development and a rapid response can produce significant environmental benefits. EPA anticipates that these actions will be in both administrative and judicial forums, and that EPA will partner with states and tribes in appropriate cases.

In some instances, the SLPD will work with the regions to develop the Agency's first enforcement response, with more traditional enforcement actions to follow. EPA may streamline cases, so that there are fewer counts against violators in order to obtain speedy resolution, reserving EPA's right to bring additional actions or additional counts.

Compliance Assistance (Sub-objective 5.1.1)

The areas that warrant compliance assistance from Headquarter's perspective appear in specific program discussions. The primary focus of the federal multimedia program should be on compliance monitoring and enforcement. However, the results of a multimedia analysis of specific facilities or entire companies might prove useful in planning future compliance assistance activities.

Compliance Incentives (Sub-objective 5.1.2)

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

Performance Expectations

With regard to compliance incentives, regions will be expected to report on the number of voluntary disclosures received and resolved pursuant to incentive policies. To ensure that the Agency will achieve its goals, the regions are expected to perform activities that will increase the use of EPA incentive policies to conduct environmental audits or other actions that reduce, treat, or eliminate pollution or improve facility environmental management practices.

Each region will lead a regional Compliance Incentive Program or participate in a national Compliance Incentive Program directed at a particular sector and/or noncompliance problem, with emphasis on violations that, once corrected, are likely to result in measurable pollution reductions.

Compliance Monitoring

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

Participation in Rapid Response Program Activities could entail the dedication and possible reprogramming of compliance monitoring resources with approval from the OECA Planning Council.

Performance Expectations

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

Regions will be expected to participate in at least one rapid response activity per year, if requested. These activities will take one of three forms: a specific rapid response initiative to

address a specific environmental or human health risk (e.g., worker protection), participation in a single multi-media, multi-regional nationally significant case, (e.g., a case against a national "bad actor"), or a multi-media, multi-regional case that directly supports a national priority (e.g., a case that is nationally significant in support of NSR-PSD).

Enforcement

(a) General Approach

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

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

(b) Rapid Response Program

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

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

Participation in Rapid Response Program Activities could entail the dedication and possible reprogramming of compliance monitoring resources with approval from the OECA Planning Council.

<u>Performance Expectations</u>

Regions will be expected to participate in at least one rapid response activity per year, if requested. These activities will take one of three forms: a specific rapid response initiative to address a specific environmental or human health risk (e.g., worker protection), participation in a

single multi-media, multi-regional nationally significant case, (e.g., a case against a national "bad actor"), or a multi-media, multi-regional case that directly supports a national priority (e.g., a case that is nationally significant in support of NSR-PSD).

PROGRAM OVERSIGHT

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

K. Requirements: Environmental Justice Program

Executive Order 12898[v] directs the Environmental Protection Agency (EPA) and other federal agencies to make environmental justice part of their mission, to the greatest extent practicable and permitted by law, by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects on minority and low-income populations.

Consistent with that mandate, the environmental laws that EPA implements and enforces direct it to protect all people from significant environmental hazards and risks. The Agency is keenly aware that minority and/or low-income and other sensitive populations frequently confront special environmental burdens caused by a host of factors including, but not limited to, those relating to: health, environmental conditions, and compliance assurance activities. Helping to satisfy its environmental justice mission to protect all people, including minority and/or low-income populations, EPA accounts for these and other issues under the environmental statutes that it implements and enforces. For example, OECA already explicitly established environmental justice as a targeting factor under the Clean Water Act and the Resource Conservation and Recovery Act[vi]. Further, OECA established environmental justice as a penalty consideration[vii] and as a factor in approving Supplemental Environmental Projects in settlements.[viii] Additionally, each implementation strategy developed for an OECA national priority should include an element on environmental justice to ensure that minority and/or low-income groups and communities are not disproportionately placed at risk from environmental and/or human health threats.

On April 15, 2003, former OECA Assistant Administrator JP Suarez, outlined the Smart Enforcement approach to compliance assurance, requiring OECA to target compliance and enforcement efforts strategically, to ensure that EPA addresses the most significant impacts to human health and the environment first. The directive identifies environmental justice as a cornerstone of the Smart Enforcement program. Notably, OECA's application of Smart Enforcement concepts provides for the use of existing environmental, compliance, and health data to target and prioritize compliance assurance activities to address significant environmental problems and to identify problems in communities with environmental and public health concerns.

Subsequently, OECA's Principal Deputy Assistant Administrator, Phyllis Harris, issued

OECA's Environmental Justice Policy[ix]. This policy further underscores the importance of environmental justice in program implementation and encouraged that environmental justice be integrated fully into OECA's planning and budgeting process and that OECA seek input from groups outside EPA on how best to incorporate environmental justice into OECA's work.

In 2001 the EPA Environmental Justice Executive Steering Committee (a group composed of EPA headquarters and regional leadership, including OECA's Deputy Assistant Administrator) directed each headquarters program office and region to develop Environmental Justice Action Plans. These documents are prospective planning tools that identify measurable commitments to address key environmental justice priorities. These strategic planning documents coordinate the environmental justice activities of the Agency and establish a basis for accountability and monitoring progress.

In 2005, the Executive Steering Committee directed that the Action Plans should:

1. Follow EPA's current Strategic Plan architecture to enhance the alignment of the Agency's environmental justice activities with its overall planning and budgeting processes; and

2. Include, as objectives to be addressed through the Action Plans: (a) areas of focus for each of the Regional or Headquarters Offices (*e.g.*, Regional or Headquarters Program Office priorities); and (b) as applicable, the eight (8) specific national environmental justice priorities, as later identified in the EPA Administrator's memorandum of November 4, 2005. These national environmental justice priorities were identified as critical issues of nation-wide concern and are also addressed in the Agency's FY 2006 - 2011 Strategic Plan of particular significance to OECA is ensuring compliance, which falls under Goal 5.[x]

The Action Plans for 2007-2008 include strategies and activities to help ensure that the Agency's efforts to address these priorities reach communities with potential environmental justice concerns.

Annual commitments, regional workplan commitments, and state performance partnership agreements (or similar EPA-State/Tribe Agency agreement) and grants for FY 2008 should be consistent with OECA's and each region's respective Environmental Justice Action Plan.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

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

Compliance assistance activities should be targeted to diminish risk relative to noncompliance problems and the conditions and health of the resident population.

For the last two years, OECA has been working to create an assessment tool known as the Environmental Justice Smart Enforcement Assessment Tool (EJSEAT) to help identify areas with potential environmental justice concerns. It builds upon the original guidelines of Smart Enforcement and the policy set-out in the "Toolkit for Assessing Allegations of Environmental Injustice." This analysis tool will help OECA programs to consistently define areas and facilities with potential environmental justice concerns based on a set of health, environmental, compliance, and social demographics information. OECA anticipates that EJSEAT will greatly enhance its ability to protect minority and low-income communities, as well as other burdened populations, from adverse human health and environmental effects. In addition, OECA expects the new tool to help to more fully integrate environmental justice into all of its priorities, programs, policies, and activities. OECA has developed a prototype version of the EJSEAT that is available for testing on the OTIS web site. The EJSEAT will not be finalized until OECA obtains internal and external peer review of the tool. Expected to be operational in FY 2008, EJSEAT will provide the regions with consistent information and may be used in the context of targeting and planning; crafting specific remedies based on local conditions; helping to apply penalty considerations; developing supplemental environmental projects (SEPs); and measuring outcomes. The regions are encouraged to utilize EJSEAT and its draft screening tool as another discretionary targeting approach as they consider how best to identify, address environmental justice concerns and measure results.

COMPLIANCE INCENTIVES (Sub-objective 5.1.2)

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

COMPLIANCE MONITORING (Sub-objective 5.1.3)

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

Performance Expectations

To ensure that the goals of environmental justice are accomplished, enforcement and compliance personnel should incorporate environmental justice concerns into ongoing enforcement/compliance activities. Moreover, enforcement/compliance activities addressing issues of environmental justice should be included in the region's Environmental Justice Action Plans and identified in annual commitments as having measurable environmental justice components. The Strategy Implementation Teams (SITs) for the national priorities should include an environmental justice element. To address environmental justice concerns, regions should ensure that:

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

Enforcement Actions

If an inspection identifies violations consult the EPA Supplemental Environmental Projects Policy, the Guidance for Community Involvement in SEPs, and other enforcement memoranda (addressing penalty determinations) regarding the appropriate consideration of environmental

justice issues. Issues pertaining to environmental justice, identified in cases of potential civil or criminal violation, should be documented and transmitted to the Department of Justice for use in case development, establishment of penalties, and remedy selection.

Program Leadership and Evaluation

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

OECA is committed to regularly assessing the effectiveness of our programs. Regular program evaluation is the best way to assure continuous program improvement and desired program performance. On September 18, 2006, EPA's Office of Inspector General issued a final evaluation report entitled *EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities.* The report observes that, "No Agency-wide guidance exists on environmental justice program or policy review." EPA has come to realize that a more systematic, broader-scale approach is needed to identifying and addressing disproportionate impacts to human health and the environment. Over the coming year, OECA and the regional offices will participate in an Agency-wide effort led by OEJ to respond to this need and develop the tools needed to address, align, assess, review, and report progress on achieving the Agency's national environmental justice priorities.

L. Requirements: Tribal Program

EPA's enforcement and compliance assurance program works with tribes to promote compliance through the use of appropriate compliance and enforcement tools in Indian country and other tribal areas and in areas outside of Indian country where tribes and tribal members have recognized rights and interests protected by treaty, statute, judicial decisions or other authorities, including Alaska (hereinafter referred to as "Indian country and other tribal areas"). Whether implemented directly by EPA or an approved tribe, selecting the appropriate tools - compliance assistance, incentives, monitoring, and enforcement - provide important gains in environmental and human health protection. In FY 2008, OECA and the regions intend to continue to increase their presence in Indian country and other tribal areas.

In spring 2004, OECA issued *Protecting Public Health and the Environment Through Enforcement and Compliance Assurance in Indian Country: A Strategy for Results* (*Strategy*). The *Strategy* develops a common understanding among EPA and tribal environmental managers and staff about how and why EPA works with tribes to maximize compliance and reduce threats to public health and the environment in Indian country and other tribal areas. The Strategy includes information on the EPA Policy for the Administration of Environmental Programs on Indian Reservations, the *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (known as the 1984 Indian Policy) and the *Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (Tribal Enforcement Guidance), as well as the federal government's trust and consultation responsibilities to tribes, and its government-to-government

relationship with such tribes.

As indicated above, the goal of OECA's FY 2008 National Tribal Compliance Assurance Priority (Tribal Priority) is to significantly improve human health and the environment in Indian country and other tribal areas through EPA and tribal compliance assistance, compliance monitoring, and enforcement activity. In FY 2007, the completion of work to identify the universe of federally-regulated facilities in Indian country and other tribal areas should increase EPA's ability to target compliance assistance, compliance monitoring, and enforcement resources. Similarly, the emphasis on increasing the number of EPA-authorized inspectors and EPA inspections at tribal schools should lead to an increased number of inspection reports submitted to EPA and the subsequent number of compliance determinations. OECA's Tribal Priority EPM resources, distributed by the Compliance Assistance and Sectors Programs Division (CASPD) are available to support this work.

Tracking and measuring of all compliance assistance, compliance monitoring, and enforcement activities in Indian country is an essential component of OECA's tribal program. OECA and the regions should use the tribal flag/identifier found in ICIS, CACDS, CCDS, or other applicable data tracking systems. Reporting on the outputs and outcomes of EPA activities is particularly crucial to measuring the progress and impact of EPA's tribal enforcement and compliance assurance program.

Following are the core activities that OECA and the regions should undertake in FY 2008. These activities are in addition to the ACS measures for the Tribal Priority.

COMPLIANCE ASSISTANCE (Sub-objective 5.1.1)

OECA's compliance assistance and capacity building efforts in Indian country and other tribal areas provide regulated facilities with the information and support necessary to maintain compliance. To support EPA's tribal compliance assistance efforts, OECA, regions, and tribes have access to the "on-line Tribal Compliance Assistance tool" and the *Profile of Tribal Government Operations* which are available at www.epa.gov/compliance/tribal/assistance. OECA and the regions should continue to use existing compliance assistance tools and tailor new compliance assistance tools for use by tribes and facilities in Indian country and other tribal areas. During FY 2008, OECA's National Enforcement Training Institute (NETI) will continue to implement its Tribal Training Strategy and reach out to tribal environmental professionals and serve as an on-line registration and course clearinghouse for all compliance assurance and enforcement training offered by OECA and the regions. OECA's Tribal Priority EPM resources are available to fund compliance assistance activities in Indian country and other tribal areas. Funding "circuit riders" who provide on-site compliance and technical assistance is extremely effective to tribes and tribal consortia is a very effective mechanism for promoting compliance in Indian country and other tribal areas. Regions must measure and report into ICIS the outcomes of 100% of tribal workshops, training, and on-site (re) visits conducted in FY 2008.

Consistent with the Tribal Enforcement Guidance, OECA and the regions typically use compliance assistance as the initial means of resolving non-compliance at tribally-owned or

managed facilities. Shortly after identifying noncompliance at a tribal facility, a short written compliance plan should be used to communicate the steps necessary to return the facility to compliance and provide a timeline for initiating an enforcement action if compliance is not achieved.

COMPLIANCE INCENTIVES (Sub-Objective 5.1.2)

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

MONITORING AND ENFORCEMENT (Sub-objective 5.1.3)

EPA conducts almost all compliance monitoring and enforcement of federal environmental programs and laws in Indian country because only a few tribes are currently authorized to operate a federal environmental program. As such, regions implement the compliance monitoring and enforcement National Program Core Requirements in Indian country. In the very limited cases where tribes have EPA-approved enforcement programs, regions oversee tribal enforcement compliance monitoring and enforcement in the same manner as they do with states as outlined in the National Program Core Requirements. However, EPA will retain federal criminal enforcement responsibilities, as these are not delegable.

Geography and resources may impact the ability of EPA inspectors to conduct inspections as outlined in the National Program Core Requirements. As envisioned by the Tribal Priority, regions should consider authorizing tribal inspectors to conduct inspections on behalf of EPA. Regions should use the *Guidance for Issuing Federal EPA Inspector Credentials to States/Tribes* and the *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf*. EPA works closely with tribes in carrying out compliance monitoring activities by consulting with tribes on inspection priorities and schedules and sharing information where appropriate. OECA's Tribal Priority EPM resources are available to fund compliance monitoring activity, including the training of tribal inspectors.

The Tribal Enforcement Guidance lays out an effective process for EPA to take civil enforcement action in Indian country and other tribal areas. Unless the exigencies of the situation suggest a different approach is necessary, regions should work with the tribe to implement a short, written compliance plan designed to promptly return noncompliant tribal facilities to compliance. Regions should take formal civil enforcement actions if the tribal facility fails to return to compliance as outlined in the compliance plan. As outlined in the Tribal Enforcement Guidance, regions obtain the concurrence of OECA's Assistance Administrator prior to taking formal civil enforcement actions at tribal facilities. Noncompliant, non-tribal facilities in Indian country and other tribal areas are treated the same as facilities located outside of Indian country and other tribal areas.

With respect to allegations of criminal violations of federal environmental laws in Indian country and other tribal areas, EPA offices and tribes will provide the EPA Criminal Investigation Division with investigative leads. Such leads will be investigated within the framework of the

Office of Criminal Enforcement, Forensics, and Training's *Policy on Investigative Discretion*.

Performance Expectations

OECA and the regions will report on the Tribal Priority ACS measures and the following:

- Reporting on the outputs and outcomes of EPA activities is particularly crucial to measuring the progress and impact of EPA's tribal enforcement and compliance assurance program As such, use the tribal flag/identifier in ICIS, CACDS, CCDS or other applicable data system to track and measure all compliance assistance, compliance monitoring, and enforcement activities in Indian country and other tribal areas. See the relevant tracking and measurement discussion in compliance assistance, compliance monitoring, and enforcement section of the NPM Guidance.
- Regional enforcement and compliance managers should engage media and Indian program managers and staff in discussing how best to allocate the OECA Tribal Priority resources and in making of specific funding decisions. In addition, regions should, as appropriate, engage tribes – particularly the Regional Tribal Operations Committees – in a dialogue on the types of projects for which these resources are available, how to distribute information about the available funds, and sharing project results.
- Review all inspection reports submitted by EPA inspectors and EPA-authorized tribal inspectors and determine whether an enforcement response is appropriate, and if so, what type.

SECTION IV. FY2008 OECA WORKPLAN SUBMISSION INSTRUCTIONS

O. Annual Commitment System

Following release of the final OECA NPM Guidance, regions should continue discussions with states and tribes to determine draft numbers for the commitments contained in the guidance. Attachment A is a listing of draft FY 2008 OECA annual commitments. Current schedules call for regions to enter their draft targets into the annual commitment system by July 9, 2007. NPMs can then review draft regional targets to ensure that all regional targets together "roll up" to result cumulatively in appropriate annual national targets. Headquarters and the regions will have approximately 2 months (July 9 through September 21) to resolve any issues and finalize annual regional targets. During this same time, regions will engage states and tribes in negotiations to complete the grant process (PPAs, PPGs, and Categorical Grants), including translating regional targets into formal commitments supported by state-by-state agreements. All commitments should be final by September 21, 2007.

The lead time before annual targets and commitments are final provides regions, states, and tribes maximum flexibility in determining commitments. Ultimately, headquarters and regions share responsibility for identifying and resolving conflicts over program priorities that present implications for the annual regional commitments. Issues not resolved by September 21, 2007 will be elevated to OECA's Acting Assistant Administrator for decision.

M. Support and Training Requests

NEIC

The regions should continue to send their annual requests for specific civil inspection, investigative, and technical support to NEIC's Civil Program Coordinator. NEIC will evaluate the requests in order to develop the final list and schedule of support activities. To initiate discussions necessary to plan and schedule appropriate enforcement support for FY 2008, NEIC would like to receive requests from the regions by August 1, 2007. It is important that NEIC receive all regional submissions by August 1, 2007 to allow for an examination of all projects in line with resources. These requests should be as specific as possible, and include information to help NEIC determine whether they can provide the requested support. As completely as possible, this information should include:

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

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

If you have any questions regarding this process please contact Gene Lubieniecki, (303) 236-6112, or Nicholas Franco (202) 564-0113. Please send NEIC support requests to both Gene and Nick.

Gene Lubieniecki, Civil Program Coordinator
US EPA – NEIC
Denver Federal Center
Building 53, PO Box 25227
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1200 Pennsylvania Ave., NW, M2221A
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N. FTE Resource Charts

The regions will complete FTE charts similar to the charts completed in previous planning cycles. Charts organize FTE information by goal, objective, and sub-objective, and then cross-walk to the media program elements. The importance of the FTE Resource Charts is significant due to increased interest from the Office of Management and Budget, the Inspector General, and Congress. Regions will receive FTE templates in August 2007. It is imperative that regions complete these charts and submit these documents to Nicholas Franco and Elizabeth Walsh on September 30, 2007.

2007 Final – Enter the region's final FTE allocation for FY2007 in the 2007 Final column.

2008 Proposed – Enter the region's proposed FTE allocation for FY2008 in the 2008 Proposed column. Headquarters recognizes that FTE levels may change after the Agency receives the FY2008 enacted budget after October 1, 2007. Therefore this number is a "best guess" estimate.

[i] This ratio is based on previous workload models that averaged the amount of resources needed to conduct major and minor inspections. All minor inspections that are traded-off for majors MUST be put into PCS/ICIS in order for the region/state to get "credit" for them.

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

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

[iv] RECAP (2003), which has been replaced by the current ACS system, also provided a measure for lQG inspections that was the equivalent of a CEI.

[v] "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" Executive Order, February 11, 1994

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

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

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

[viii] *See*, *e.g.*, Environmental Protection Agency, Supplemental Environmental Projects Policy 13-14 (May 1, 1998).

[ix] "OECA Environmental Justice Policy" Memorandum, January 12, 2004.

[x] The eight national environmental justice priorities are listed below as "objectives" under the relevant EPA Strategic Plan goal. The ninth objective, "Cross Cutting Strategies," is one of the national environmental justice priorities, and should be included as one of the areas of focus for the program and regional offices.

Goal 1: Clean Air and Global Climate Change
- Objective 1: Reduction in number of asthma attacks
- Objective 2: Reduce exposure to air toxics

Goal 2: Clean and Safe Water
- Objective 1: Safe fish/shellfish
- Objective 2: Clean and safe drinking water

Goal 4: Healthy Communities and Ecosystems
- Objective 1: Reducing elevated blood lead levels
- Objective 2: Collaborative problem-solving to address environmental justice issues
- Objective 3: Revitalization of brownfields and contaminated sites

Goal 5: Compliance and Environmental Stewardship
- Objective: Ensuring compliance

Goal: Cross Cutting Strategies

Objective:Internal Capacity-Building (*e.g.*, training, internal program management)

In addition, each region and, to the extent applicable, program office should also address issues arising under Goal 3, Land Preservation and Restoration, of the EPA Strategic Plan.

Enforcement and Compliance Assurance Resource Infor
Region ____

Objective/Sub-objective/ Program Component	CWA NPDES 2007 Enacted	CWA NPDES 2008 Proposed	CWA Wetlands 2007 Enacted	CWA Wetlands 2008 Proposed	SDWA UIC 2007 Enacted	SDWA UIC 2008 Proposed	SDWA PWSS 2007 Enacted	SDWA PWSS 2008 Proposed	Stationary Sources 2007 Enacted	Stationary Sources 2008 Proposed	Hazardous Waste 2007 Enacted	Hazardous Waste 2008 Proposed	Pesticides 2007 Enacted	Pesticides 2008 Proposed
Goal 4: Communities/Ecosystems	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Objective 2	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Community Health														
57 Environmental Justice	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
GOAL 5: COMPLIANCE	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
OBJECTIVE 1	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Improve Compliance														
44 Civil Enforcement	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
48 Compliance Assistance and Centers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
49 Compliance Incentives	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
50 Compliance Monitoring	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
52 Criminal Enforcement	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
85 International Capacity Building	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OBJECTIVE 2	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Improve Environmental Performance														
90 NEPA Implementation	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
ENABLING														
F8 IT/Data Management	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

mation

Toxic Substances 2007 Enacted	Toxic Substances 2008 Proposed	EPCRA 2007 Enacted	EPCRA 2008 Proposed	Regional Counsel 2007 Enacted	Regional Counsel 2008 Proposed	Federal Facilities 2007 Enacted	Federal Facilities 2008 Proposed	Sector and Multimedia Enforce. 2007 Enacted	Sector and Multimedia Enforce. 2008 Proposed	Environ. Review and Coordination 2007 Enacted	Environ. Review and Coordination 2008 Proposed	Non-Enforcement 2007 Enacted	Non-Enforcement 2008 Proposed	TOTAL 2007 Enacted	TOTAL 2008 Proposed
0.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
0.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
0.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

NPM Guidance Measures Appendix
Office of Enforcement and Compliance Assurance (OECA) FY 2008

G/O/S	ACS Code	Expected Text	Nat. Target	01	02	03	04	05	06	07	08	09	10	HQ
5.1.1	988	Percentage of regulated entities receiving direct compliance assistance from EPA reporting that they improved EMP as a result of EPA assistance.	50%											
5.1.1	ASST01	Conduct outcome measurement for 100% of all compliance assistance workshops, training, onsite visits, and revisits which support the OECA national priorities.	CA Activities											
5.1.1	FEDFAC01	Each Region shall conduct at least two compliance assistance activities for Federal facilities to support the integrated strategy areas.	CA Activities											
5.1.3	183	Dollars invested in improved environmental performance or improved environmental management practices as a result of concluded enforcement actions (i.e., injunctive relief and SEPs)	4.30 Billion Dollars											
5.1.3	ASB01	Report the number of federal TSCA asbestos inspections.	Inspections											
5.1.3	CAA01	Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by region per year.	Evaluation											
5.1.3	CAA01.s	Number of Full Compliance Evaluations (FCEs) to be conducted at Title V majors by state per year.	Evaluation											
5.1.3	CAA02	Number of Full Compliance Evaluations (FCEs) to be conducted at "80% synthetic minors" and other sources, as appropriate, by region per year.	FCEs											
5.1.3	CAA02.s	Number of Full Compliance Evaluatiosn (FCEs) at "80% synthetic minors," and other sources (as appropriate), by state per year .	FCEs											
5.1.3	CAA03	Number of Partial Compliance Evaluations (PCEs) to be conducted by the regions.	PCEs											
5.1.3	CAA03.s	Number of Partial Compliance Evaluations (PCEs) to be conducted by the states that were the result of the negotiation process for the year (could be the result of redirecting resources from FCEs to PCEs).	PCEs											
5.1.3	CAA05	Regions should project the number of investigations to be initiated in FY 2008.	Investigations											
5.1.3	CAA11	Conduct inspections at 5% of the total number of facilities in the region required to submit RMPs.	Inspections											

5.1.3	CAA16	Regions should ensure that delegated agencies have written agreements to provide complete, accurate, and timely data consistent with the CMS, HPV policy, and the AFS ICR; identify the agreement; and provide copies of the relevant language.	Agreements											
5.1.3	CAA17	Regions and delegated agencies should enter all MDRs in AFS consistent with the agency policies and the ICR. If for some reason a delegated agency does not agree to enter the MDRs, the region is responsible for ensuring that the data is entered into AFS in a timely manner. If the region is responsible for entering state/local/tribal data, identify the agency.	MDRs											
5.1.3	CAA19	Consistent with CMS, regions should conduct at least one in-depth evaluation of a delegated program per year and provide the written results to HQ.	Delegated Program											
5.1.3	CWA01	Project by state the number of federal inspections at NPDES major facilities.	Inspections											
5.1.3	CWA01.s	Project by state the number of state inspections at NPDES major facilities.	Inspections											
5.1.3	CWA03	Project by state the number of federal oversight inspections to be conducted. The regions must provide a detailed explanation if no oversight inspections are projected in this area.	Inspections											
5.1.3	CWA05	Project by state the number of federal inspections of POTWs with an approved pretreatment program in both approved and unapproved states.	Inspections											
5.1.3	CWA05.s	Project by state the number of state inspections of POTWs with an approved pretreatment program in both approved and unapproved states.	Inspections											
5.1.3	EPCRA01	Number of federal EPCRA data quality inspections; provide an explanation if below the target level.	Inspections											
5.1.3	EPCRA02	Number of federal EPCRA 313 inspections; provide an explanation if below the target level.	Inspections											
5.1.3	FEDFAC03	Each Region will conduct two multi-media inspections to support the Integrated Strategy areas. Regions may substitute four single media inspections in lieu of one multi-media inspection.	Inspections											
5.1.3	FEDFAC05	Number of Federal facility single media inspections to be conducted by EPA to support Integrated Strategy areas: CWA/NPDES Storm Water; Federal Laboratories; and Federal Underground Storage Tanks.	Inspections											
5.1.3	FIFRA-FED1	Project regional (federal) FIFRA inspections.	Inspections											

5.1.3	HQ-CC	Number of concluded Civil cases with at least 1 million lbs of pollutants reduced, $5 million of injunctive relief, or $1 million civil penalty. Number of concluded of Superfund cases with cost recovery or PRP clean up commitment of at least $5 million, or VCMA of 1 million cubic yards.	Cases												
5.1.3	HQ-CR	Number of civil referrals to the Department of Justice.	Referrals												
5.1.3	HQ-LBS	Pounds of pollution estimated to be reduced, treated, or eliminated as a result of audit agreements and concluded enforcement actions.	550.40 Million Pounds												
5.1.3	HQ-VOL	Volume of contaminated media addressed.	Cubic Yards												
5.1.3	LED01	Number of 1018/402/406 federal inspections. In the regional comment field provide an explanation if no activity projected in this area or if Section 402 inspections in unauthorized states is the rationale for trade-offs with the Disclosure Rule or Section 406 inspections.	Inspections												
5.1.3	PCB01	Inspect 33% of the PCB commercial storage and disposal facility universe.	Inspections												
5.1.3	RCRA01	Project by state the number of TSDFs to be inspected by the region during the year. The regions must commit to inspecting at least 2 TSDFs in each state unless approval is obtained from headquarters to deviate from this requirement.	Inspections												
5.1.3	RCRA01.s	Project by state the number of TSDFs to be inspected by the state during the year.	Inspections												
5.1.3	RCRA02	Project by state the number of LQGs to be inspected by the region during the year.	Inspections												
5.1.3	RCRA02.s	Project by state the number of state LQGs inspections to be inspected during the year under state authority.	Inspections												
5.1.3	RCRA03	Annually inspect each treatment, storage or disposal facility operated by states or local governments as required under SWDA 3007(d).	Inspections												
5.1.3	SDWA02	Public Water Systems listed on a 'Fixed Base' SNC/Exceptions list will be addressed or resolved either by a state or tribe with primacy, or by EPA.	SNCs												
5.1.3	SRF-01	The number of State Review Framework reviews to be completed in Fiscal Year 2007.	Reviews												
5.1.3	TSC01	Project the number of core federal TSCA inspections for Regions maintaining an investment in core TSCA (sections 4,5,8,12 amd 13).	Inspections												
		# of Commitments:	**40**	**34**	**34**	**34**	**34**	**34**	**34**	**34**	**34**	**34**	**34**	**34**	**6**

State Grant Template Measures Appendix
Office of Enforcement and Compliance Assurance (OECA) FY2008

Goal: 5

Objective: 1

Subobjective: 3

Code	Commitment Text	FY05 Nat. Baseline	FY06 Commits	FY07 Nat. Target	FY05 State Baseline	FY07 State Measurement	Source of Data	Comments
LEAD-G01	Number of 402/406 inspections by state.							
LEAD-G02	Number of enforcement actions taken by state.							
PST- G01	Percent of violators committing subsequent violations.							
PST- G02	Percent of compliance actions taken as a result of inspection/enforcement.							
PST- G03	Number of enforcement actions taken (federal & state) per millions dollars of cost (federal & state).							
TSC-G01	Total number of PCB inspections conducted by state. (PCB TDFs need to be inspected once every 3 years)							
TSC-G02.a	Number of asbestos inspections conducted by state with EPA credentials.							
TSC-G02.b	Number of asbestos inspections conducted by state under own authority (waiver states).							
TSC-G03.a	The number of PCB inspections conducted with EPA credentials that resulted in federal enforcement action (including civil penalties and Notices of non-compliance)							
TSC-G03.b	The number of asbestos inspections conducted with EPA credentials that resulted in federal enforcement action (including civil penalties and Notices of non-compliance)							
	# of Commitments: 10							