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INNOVATIVE APPROACHES

to

Enforcement and Compliance Assurance

***ACTION PLAN* for INNOVATION**



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, DC 20460

OFFICE OF ENFORCEMENT AND
COMPLIANCE ASSURANCE

From the Assistant Administrator:

This *Action Plan for Innovation* is the result of extensive outreach to stakeholders, which assisted us in evaluating new directions taken over the last five years and in identifying additional steps we can take to improve our program. Participants in the dialogue contributed valuable time and ideas to our evaluation and we sincerely appreciate those efforts. We invite you to continue to share your perspectives and views on how we can best ensure compliance with our nation's environmental laws so that all Americans receive the health and environmental protections of those laws.

Our dialogue began in January and February 1999, with EPA and the Vice President's National Partnership for Reinventing Government co-sponsoring two major conferences entitled "Protecting Public Health and the Environment Through Innovative Approaches to Compliance" in Washington, DC, and in San Francisco, CA, respectively. More than 290 people participated at these conferences, including representatives from environmental and community groups, trade associations, small and large businesses, academia, and federal, state, tribal and local governments. The conferences examined four major areas: (1) compliance assistance; (2) compliance incentives; (3) information and accountability; and (4) innovative approaches to enforcement. EPA sought input on how these areas can be integrated to maximize compliance and reduce the risk to human health and the environment. We learned a great deal from these meetings.

As a followup to these conferences, EPA released an Executive Summary of the East and West Coast Conferences. In addition, OECA published a *Federal Register* notice seeking comment on the same four areas that had been discussed at the conferences. We relied heavily on this input in developing this plan.

EPA has already taken steps to implement the Action Plan and has included milestones for each action. While the milestones are ambitious, we believe they are achievable and we will hold ourselves accountable for meeting them. Timely implementation of this plan is a top priority for the enforcement and compliance assurance program.

A number of the action items call for EPA to seek more input from those outside the Agency. I hope you will continue to work closely with us as we implement this plan. For example, in the future EPA will consider the ideas of interested stakeholders in identifying EPA's priorities for its compliance assurance and enforcement program. EPA will also seek the ideas of interested stakeholders on a compliance assistance plan that will focus Agency resources on environmental and compliance problems that need federally supported compliance assistance. We look forward to working with you as we implement this plan and as we continue to look for opportunities to improve the effectiveness of our program.

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EXECUTIVE SUMMARY

Five years ago, EPA reorganized its enforcement and compliance assurance program. At that time, EPA made many changes and launched new initiatives to make the program more effective in protecting public health and the environment. EPA used the occasion of the five-year mark to evaluate progress on new directions and identify additional program improvements. To do so, EPA undertook extensive outreach to stakeholders. These outreach efforts confirmed that EPA's new direction in its compliance assurance and enforcement program is sound. It also confirmed that EPA can continue to do even more to improve the program. This report is an action plan built on the excellent feedback we received from stakeholders. It highlights actions EPA will take to further the new directions in compliance assistance, incentives, and enforcement.

A few of these actions deserve special note. First, this report highlights a series of changes EPA will make to better serve the needs of its state partners and other compliance assistance providers. EPA has learned a great deal about compliance assistance needs since the reorganization five years ago. EPA and stakeholders both agree that EPA's role in compliance assistance should shift to more of a "wholesaler" than a "retailer" of compliance assistance. This shift must recognize the key role that EPA can play in providing tools and other assistance to frontline compliance assistance providers in states, localities, and the private sector. As it shifts emphasis, the enforcement and compliance assurance program will seek and consider the ideas of interested stakeholders and work with Regions and program offices to develop an EPA-wide compliance assistance plan. This plan will focus resources on priority environmental and compliance problems that need federally-supported compliance assistance. EPA also commits to develop more timely compliance assistance materials for certain new regulations.

This report also continues EPA's strong endorsement of self-auditing by the regulated community and of environmental management systems as a key compliance and performance tool. EPA will amend its Audit Policy and Small Business Policy to further encourage companies to complete self-audits and to disclose and correct any violations discovered. The enforcement and compliance assurance program will support the Agency's commitment to use environmental management systems to assist in accomplishing its strategic goals. In addition, EPA will enhance the role of interested stakeholders in identifying EPA's compliance and enforcement priorities.

EPA commits to implement an enhanced set of performance measures for assessing the improvements resulting from the full range of EPA's enforcement and compliance assurance activities. This effort has been underway for several years and a new set of outcome measures will be fully implemented in the next few years. In addition, based on its early success with integrated strategies in addressing noncompliance priorities, EPA will consider more routine use of such strategies. Finally, EPA remains committed to a strong base enforcement program to address serious noncompliance problems.

EPA's five-year review produced many good ideas for improving the enforcement and compliance assurance program. These actions are detailed in the report, and, coupled with our ongoing efforts, will improve the effectiveness and efficiency of the enforcement and compliance assurance program. EPA has already started work on implementing this report, and looks forward to the challenges ahead in turning the commitments into a new way of doing business.

CHAPTER I. INTRODUCTION

In 1994 EPA sought to improve the effectiveness of its compliance monitoring and enforcement program by consolidating all of its Headquarters operations into one office: the Office of Enforcement and Compliance Assurance (OECA). A number of EPA Regional offices implemented similar reorganizations. These reorganizations resulted in substantive and structural changes. EPA recently undertook a five-year review to assess how well the reorganizations improved the office's effectiveness. This assessment included soliciting ideas from EPA's State partners and a broad array of stakeholders on how the Agency can further improve public health and the environment through its compliance assurance efforts. This report describes the actions that EPA will take as a result of that assessment.

The assessment began in early 1999 with EPA and Vice President Gore's National Partnership for Reinventing Government co-sponsoring two major conferences. More than 290 people participated in these conferences, including representatives from environmental and community groups, trade associations, small and large businesses, academia, and federal, State, tribal, and local governments. Participants discussed four major subjects: (1) compliance assistance; (2) compliance incentives; (3) information and accountability; and (4) innovative approaches to enforcement. In particular, EPA sought ideas on how these areas can be integrated to maximize compliance and reduce the risk to human health and the environment. In January 1999, the Agency released a report on its accomplishments entitled, "Protecting Your Health and the Environment Through Innovative Approaches to Compliance: Highlights from the Past 5 Years." This report is available at <http://www.epa.gov/oeca/polguid/oeca5sum.html>.

EPA released a summary of the two conferences and published a *Federal Register* notice seeking comment on its current efforts and how EPA can further improve human health and the environment through new compliance and enforcement initiatives. The comment period closed April 16, 1999, and EPA received comments from more than 75 individuals or organizations. Conference summaries and a copy of the *Federal Register* Notice are also available at <http://www.epa.gov/oeca/polguid/oeca5sum.html>.

Most of the comments address one or more of the following major themes:

- a. State/local/tribal governments and private providers should provide direct compliance assistance; EPA should serve primarily as a "wholesaler" of compliance assistance;
- b. EPA's compliance assistance centers are providing a valuable service;
- c. EPA should develop compliance assistance materials in a timely manner following the issuance of significant new regulations and should take steps to ensure that the target audience receives the compliance assistance materials;
- d. EPA should offer incentives to promote compliance, in particular through its Audit Policy;
- e. EPA, working with States, should improve the information available to the public regarding compliance and environmental performance data;
- f. EPA should continue to measure the effectiveness of its enforcement and compliance assurance program in achieving compliance with environmental requirements to protect human health and the environment; and
- g. Compliance assistance and incentives can often be more effective when integrated with enforcement strategies.

The input that EPA received during this assessment resulted in the commitments that appear in this Action Plan for Innovation. In addition, EPA created the Agency-wide Task Force on Innovations (“Task Force”) that was charged with submitting recommendations to the Administrator on actions EPA can take to continue to reinvent environmental regulation in ways that are cleaner, cheaper, and smarter. The Task Force considered the views from the two enforcement and compliance assurance conferences and conducted an extensive stakeholder process to seek ideas for further innovative approaches to environmental protection. The Task Force’s report, “Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress” (www.epa.gov/reinvent), completed in July 1999, includes commitments from the Agency’s enforcement and compliance assurance program, and other EPA offices. The commitments concerning the enforcement and compliance assurance program also appear in this document, along with many action items that are not in the EPA Innovations Report.

The Action Plan is organized around the four topics discussed at the conferences held earlier this year. The plan addresses each topic in a separate chapter. Each chapter discusses the actions that the Agency will take to address the comments it received during the conferences or in response to the *Federal Register* notice. For each action, the plan also identifies significant milestones and a responsible office.

CHAPTER II. INNOVATIONS IN DELIVERY OF COMPLIANCE ASSISTANCE

This chapter commits EPA to broaden its compliance assistance programs by adopting an Agency-wide strategy encompassing the full range of regulatory activities, from rulemaking through compliance and enforcement. This strategy will change EPA's compliance assistance program in two key respects: (1) EPA will expand its efforts to provide timely compliance assistance for final rules, and (2) EPA will increase its role as a "wholesaler" of information by distributing and marketing tools through a network of compliance and technical assistance providers at the State and local level that work more directly with the regulated community. EPA will provide direct "retail" delivery of assistance primarily as part of targeted initiatives.

EPA will select rules for developing compliance assistance tools through an annual planning process. EPA will work with States and obtain input from stakeholder groups to establish these priorities and will hold a periodic forum of all compliance assistance providers – public and private – to exchange information and provide input to the Agency's compliance assistance priorities. A clearinghouse of compliance assistance materials available from government and private assistance providers will be developed.

EPA is also increasing the availability of information that is helpful to regulated entities in determining what they must do to comply with federal environmental requirements. Specifically, by the end of FY2000, EPA will make all significant policy and guidance documents available to the public through the Internet in an integrated system. To date, EPA has identified approximately 6,000 policy, guidance, and interpretive documents for possible inclusion in the collection. EPA has converted nearly 3,000 documents into an electronically-accessible format and is in the final stages of developing a retrieval application so that the public may search for, find, and download these documents from EPA's internet pages.

A. Deliver Compliance Assistance Information and Tools for Economically Significant Rules. In its recently-issued Innovations Report, EPA committed to issuing compliance assistance materials for new economically significant regulations (generally those that have an economic impact of \$100 million or more) that apply to companies and/or governmental facilities, typically within 90 days of final rule promulgation. EPA may decide to produce a compliance guide for a "substitute" rule that is not economically significant rather than for a rule that does meet that threshold, because it would be more beneficial. These guides will be developed in conjunction with each program's rulemaking process.

The enforcement and compliance assurance program will support this commitment to develop compliance assistance tools early by assisting in the development of compliance assistance guides and self audit/inspection checklists. These materials will include information about how to comply through pollution prevention, where appropriate. Through the Compliance Assistance Forum (see below) and other opportunities for stakeholder input, EPA will consider the development of compliance assistance tools for some existing regulations, besides developing such tools for new regulations. The materials will be developed with input from frontline personnel in government, and the regulated community and other stakeholders as appropriate.

Milestone: Ongoing — Will support program office development schedule and assign compliance and enforcement staff to working group.

Responsible office: Office of Compliance (OC) in OECA has lead responsibility to coordinate staffing of HQ and Regional enforcement and compliance assurance personnel to (1) work with program offices on compliance assistance tool development for appropriate regulations, and (2) to develop other compliance assistance tools.

B. Supporting the Development of Expert Systems. In its recently-issued Innovations Report, the Agency committed to developing prototype computer software programs (“expert systems”) in conjunction with certain regulations. Expert systems guide facility operators through new regulations and provide answers on applicability, deadlines, and what must be done to comply. The Agency would select the appropriate regulations for development of these systems based on consultation with its State partners and other assistance providers. The selected regulations would be identified in the annual compliance assistance plan. The enforcement and compliance assurance program will support the development of these expert systems.

Milestone: Ongoing — Will support program-office development schedule.

Responsible office: OC in OECA has lead responsibility to coordinate staffing of HQ and Regional enforcement and compliance assurance personnel.

C. Foster a Network of Compliance Assistance Providers. EPA will support and rely on a variety of organizations that have direct contact with regulated entities to advise it of compliance assistance needs. This network includes State, local, and tribal governments, Small Business Assistance Programs, pollution prevention programs, universities, community groups, licensing agencies, trade associations, and professional associations. EPA will also look to expand this network to include non-traditional compliance assistance providers, such as product suppliers.

EPA commits to expand its role as a “wholesaler” of compliance assistance information by convening a Compliance Assistance Forum. OECA and Regional compliance assistance staff will organize a national Compliance Assistance Forum of public and private representatives to share information among participants on recently promulgated federal regulations and recently developed compliance assistance materials. The forum will assist EPA in supporting the network of compliance assistance providers by giving EPA ideas and information about how to best serve as a “wholesaler” of compliance assistance information, and by providing stakeholder views on compliance assistance priorities. The forum will also facilitate the exchange of tools, methods, and lessons learned.

Milestone: March 2000 — Convene forum.

Responsible office: OECA — Office of Compliance

D. Developing a Clearinghouse of Compliance Assistance Materials. In conjunction with State and local governments, OECA will develop a clearinghouse of compliance assistance materials. The clearinghouse will, in phases, provide access to information from the public sector and from private providers, such as trade associations.

Milestone: October 30, 1999— Begin development of clearinghouse.
September 30, 2000— Clearinghouse operational.

Responsible office: OECA-OC

E. Ensure the Viability of Compliance Assistance Centers. The Centers are a key component of the Agency's delivery of compliance assistance and development of tools. The Centers have been well received by the regulated community and others as a valuable and unique source of multi-media, sector-based compliance and environmental assistance. As a result, EPA's compliance assurance program will continue to support existing centers and evaluate the need for additional centers.

Milestone: Ongoing. EPA will evaluate the resource needs of the centers annually during the development of the budget.

Responsible office: OECA-OC

F. Develop Annual Compliance Assistance Plan. In consultation with its State and tribal partners, other compliance assistance providers and stakeholders, EPA will develop an annual plan to implement the Agency-wide strategy for compliance assistance. The plan will ensure that resources are focused on areas where they are most needed. The plan will include an identification of the regulations for which EPA will develop compliance guides, audit checklists or expert systems. The annual plan also should examine existing regulations to determine whether compliance problems could be addressed through clarifying guidance and direct assistance from the provider network.

Milestones: September 30, 1999 — Begin consultation with State partners to develop compliance assistance plan.

February 2000 — Circulate draft plan to partners and private providers

April 2000 — Submit plan to Deputy Administrator.

May 2000 (and annually thereafter) — Finalize plan.

Responsible office: OECA- OC

CHAPTER III. INNOVATIONS IN COMPLIANCE INCENTIVES

To achieve compliance and encourage environmental performance beyond what the law requires, EPA has incorporated incentives into its compliance assurance and enforcement program. In particular, EPA has encouraged regulated entities to self-police, discover, disclose, promptly correct and prevent future violations through penalty waivers or reductions offered under EPA's policy, *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), and the *Final Policy on Compliance Incentives for Small Business* (Small Business Policy). In addition, EPA's *Policy on Flexible State Enforcement Responses to Small Community Violations* provides the tools and flexibility that small communities need to achieve environmental compliance on a sensible schedule and with penalty reductions for correcting violations.

EPA's stakeholders encouraged the enforcement and compliance assurance program to build on the work of the Audit Policy, the Small Business Policy, and other innovations. This chapter describes the actions EPA will take to promote compliance and other environmentally responsible behavior.

A. Revise the Audit Policy to Increase Self-policing and Disclosures While Assuring the Protection of Human Health and the Environment. Since EPA's Audit Policy became effective in January 1996, hundreds of responsible companies have relied on the Audit Policy to voluntarily self-police, disclose, promptly correct, and prevent future environmental violations in exchange for reduced civil penalties. As of July 1999, 485 companies have disclosed potential environmental violations under the policy at more than 1906 facilities, and EPA has reduced or waived penalties under the Policy for 199 companies at 987 facilities.

In a *Federal Register* notice published May 17, 1999, EPA announced the preliminary results of its evaluation of the Audit Policy and solicited public comment on the proposed revisions to the policy that are based on the evaluation. For example, according to the preliminary results of the evaluation:

- Use of the policy has been widespread, including significant multi-facility disclosures;
- Users of the policy report a very high satisfaction rate, with 88 percent of the respondents stating that they would use the policy again; and
- The discovery and correction of violations under the policy have removed pollutants from the air and water, reduced the accidental releases of pollutants into the environment, and improved public information on potential environmental hazards.

In the Federal Register notice, EPA proposed to lengthen the period for prompt disclosure from 10 to 21 days and clarify the availability of penalty mitigation for multi-facility disclosures. EPA also commits to reduce the time to process Audit Policy cases. For example, EPA will encourage companies to use disclosure checklists so that EPA receives all of the information it needs to determine policy applicability and resolve cases in a timely fashion.

EPA is already taking steps to better manage disclosures pursuant to the Audit Policy. For example, EPA is using self-certification and unilateral letters of determination for certain types of cases, such as those involving few violations. EPA also is encouraging the use of disclosure checklists by companies that want to disclose. Checklists ensure that the disclosure includes all of the information needed by EPA to determine the policy's applicability and help EPA timely resolve cases. In addition, EPA now has a national audit policy coordinator to field questions from Regional offices and the regulated community, and is adapting its data systems to better track pertinent case information. The Agency expects these changes to speed up the processing of many cases.

Milestones: **May 17, 1999** — Published *Federal Register* notice seeking comment on proposed revisions to the Audit Policy (64 Fed. Reg. 26,745).

July 16, 1999 — Close of comment period on proposed revisions to the Audit Policy.

December 1999 — Issue Final Revised Audit Policy.

Responsible Office: OECA-Office of Planning and Policy Analysis (OPPA)

B. Simplify the Small Business Policy to Increase Disclosures While Assuring the Protection of Human Health and the Environment. Now that the Small Business Policy has been in effect for three years, EPA is seeking ideas from representatives of small businesses and other stakeholders on how to modify it to encourage more small businesses to disclose and self-correct environmental violations. For example, EPA is requesting comment on whether the Small Business Policy should allow small businesses that disclose and correct violations to receive 100 percent mitigation of the gravity-based portion of the penalty regardless of how the disclosing small business discovers the violation. The current policy limits the 100 percent mitigation of the gravity portion of the penalty to situations in which the small business discovers the violation as a result of receiving on site compliance assistance or conducting a self-audit.

Milestones: **July 29, 1999** — Published *Federal Register* notice seeking comment on proposed revisions to the Small Business Policy.

September 27, 1999 – Close of Comment Period.

December 1999 — Issue Final Revised Small Business Policy.

Responsible Office: OECA-OC

C. Encourage Corporate-Wide Disclosures. EPA will expand upon its use of the Audit Policy to facilitate and encourage corporate-wide and multi-facility audits.

Companies with multiple facilities or with facilities located in more than one EPA Region that seek to audit and disclose under EPA's Audit Policy may find it difficult to coordinate disclosures. In addition, because of the potentially continuous stream of violations discovered during the course of a corporate-wide audit, companies could be faced with preparing numerous disclosures to meet the policy's 10-day disclosure requirement contemplated for single-facility disclosures.

Corporate audit agreements are designed to address potentially high-volume disclosures and to provide the efficiency of a sole mechanism for analysis and settlement of similar or voluminous violations. Audit agreements provide an advanced understanding with respect to schedules for audit commencement and completion, disclosure and correction of violations, and in some cases may include stipulated penalties for violations not covered by the Audit Policy. Such advanced agreements provide companies with assurances that otherwise qualified disclosures will meet EPA's expectations for timely disclosure and correction, and, in some cases, provide the predictability of knowing potential penalties in advance.

Two recent corporate agreements illustrate the success of corporate audit agreements and exemplify how such agreements can be tailored within reason to meet the needs of companies in specific auditing situations:

- The Arizona Chemical audit agreement provides for a 12-month TSCA audit at six of its facilities for all products that the company sells. This agreement enabled the company to review their entire operations on a mutually agreed-upon schedule and without interruption by a routine federal inspection.
- The AMR Corporation (American Airlines) audit settlement agreement resolves violations discovered through a corporate audit of AMR's facilities at 152 airports. The agreement addresses violations of federal diesel fuels regulations that prohibit the use of high-sulfur fuel in motor vehicles. This agreement provided the company with an efficient resolution to numerous violations while avoiding the risk of ineligibility due to violations that could have been considered to be a pattern.

EPA plans to build on its use of corporate audit agreements and corporate audit settlements as a means of encouraging corporate-wide disclosures. EPA will issue a fact sheet, available to the public on OECA's audit website, in which the Agency will establish a process for handling multi-facility disclosures and identify situations for which corporate agreements may be especially appropriate. In addition, EPA will use outreach to national organizations and individual industry sectors to encourage corporate audits and the use of corporate audit agreements and settlements.

Milestone: November 30, 1999 - Issue corporate audits fact sheet.

Responsible Offices: OECA-Office of Regulatory Enforcement (ORE) and Regions

D. Develop Compliance Audit Protocols. EPA will develop multi-media environmental audit protocols to assist the regulated community in conducting environmental audits and ensure that audits are conducted

thoroughly and comprehensively. EPA is developing these protocols to encourage businesses and organizations to perform environmental audits to enhance environmental compliance and to discover and disclose violations in accordance with EPA's Audit and Small Business Policies. Each protocol will summarize key requirements under the relevant statute, define regulatory terms, and provide an overview of the federal laws affecting the respective environmental management or statutory area. The protocols will include a regulatory checklist that will match regulatory requirements with suggested performance objectives for the auditor.

To date, EPA has issued four audit protocols to provide guidance in conducting audits under the Comprehensive Response, Compensation, and Liability Act (CERCLA), the Emergency Planning and Community Right-To-Know Act (EPCRA), and the Resource Conservation and Recovery Act (RCRA) (in two volumes for generators and treatment storage and disposal facilities).

Milestones: December 1999 – Complete and distribute protocols covering non-hazardous waste management, universal waste and used oil, pesticides management, management of toxic substances, Safe Drinking Water Act, spill prevention control and countermeasure requirements and storage tank regulations.

March 2000 – Complete and distribute audit protocols covering the Clean Water Act, the Clean Air Act, and the Toxic Substances Control Act.

Responsible Office: OECA-OC

E. Support the Evaluation and Strategic Promotion of Environmental Management Systems (EMSs). EPA endorses the use of well-designed EMSs that focus on improved compliance, environmental performance, and pollution prevention. These systems provide a framework for organizations and communities to more effectively manage their environmental obligations, including those required to comply with applicable statutes and regulations. In addition, these systems can be useful for moving beyond compliance, improving overall environmental performance, and making greater use of pollution prevention approaches. From a business standpoint, EMSs can help organizations meet their environmental obligations more efficiently, and, therefore, maintain their competitive position in various markets.

The recently-issued Innovations Report commits EPA to use EMSs to assist the Agency in accomplishing its strategic goals. EPA's enforcement and compliance assurance program routinely encourages the use of EMS in its compliance and enforcement activities. The enforcement and compliance assurance program will support the Agency's efforts and will work with other EPA offices to further improve the Agency's understanding of how EMSs work and their effect on compliance and other measures of environmental performance. In addition, the enforcement and compliance assurance program will strategically promote the use of EMSs in certain sectors, including sectors that are dominated by small business, to improve compliance and overall environmental performance.

Milestone: Six months after Issuance of Innovations Report — Support the development of a strategy by the Office of Policy and Reinvention (OPR) to increase EMS use in targeted sectors or geographic areas.

Responsible Offices: OECA-OPPA and OC

Milestone: Six months after Issuance of Innovations Report -- Support the development of tools by OPR that encourage improved environmental performance, such as training, information gathering, “best practices” manuals, and short-term and long-term measures of environmental performance.

Responsible Offices: OECA- OPPA and OC

Milestone: Three years after Issuance of Innovations Report — Support an evaluation by OPR of the environmental and economic results of EMSs.

Responsible Offices: OECA- OPPA and OC

F. Support EPA’s Development of a “Performance Track.” EPA is committed to encourage companies that already excel to continue to improve their environmental performance. Several widely recognized policy reports have recommended that EPA develop an “alternative track” or “performance track” that would create incentives for companies to implement innovative environmental strategies for improving performance. While definitions of what constitutes a “performance track” vary, the term generally refers to providing “top performers” greater flexibility in how they meet regulatory requirements if they do more to protect the environment and assure accountability. Such extra steps can include: (1) implementing a well-designed EMS; (2) involving the community in decision-making; and (3) reporting to the public about their environmental performance. EMSs have the potential to be a foundation of a performance track.

Milestone: Ongoing — Participate in and support EPA’s commitment to develop a “performance track.”

Responsible Offices: OECA-OPPA and OC

CHAPTER IV. INNOVATIONS IN INFORMATION AND ACCOUNTABILITY

During the past five years, EPA has been working to increase public awareness of the compliance status and environmental performance of regulated entities and the nature and timeliness of EPA and State responses to noncompliance. Concurrent with creating greater access to EPA data systems, EPA has developed new performance measures to enable the public, government, and regulated entities to assess the state of compliance and the extent to which the Agency's compliance assurance and enforcement activities improve compliance and environmental quality.

Building upon these efforts, EPA will continue to work with its State partners to improve the quality and kind of data in its data systems submitted under EPA's State program grants. In addition, EPA will improve the availability of that data to the public in a format that will enable them to assess compliance and environmental performance of a particular facility in their community and its performance relative to similar facilities in the same sector or geographical area. Finally, for the first time, EPA will be eliciting and considering the views of local and national citizen groups, businesses, and other regulated entities on EPA's priorities for its enforcement and compliance assurance program.

A. Enhance Role of Stakeholders in National Priority-Setting for the Enforcement and Compliance Assurance Program. Beginning in FY2000, for the FY2002-2003 planning cycle, EPA will elicit the views of various stakeholders, including representatives of community groups, industry, environmental groups, and other federal agencies for setting priorities for EPA's compliance assurance and enforcement program. EPA currently works with the Regions, States, and other program offices at EPA to develop national priorities for compliance assurance and enforcement resources for each two-year planning cycle. EPA will expand the role of the States and seek input from tribes, and stakeholders in developing future priorities for EPA's enforcement and compliance assurance program.

Milestone: September 2000 — Convene stakeholder meetings to provide input to the enforcement and compliance assurance program on appropriate priorities for enforcement and compliance assurance for FY2002-2003.

January 2001 — Issue Draft Memorandum of Agreement (MOA).
Guidance outlining recommended priorities for FY2002-FY2003.

April 2001 — Issue Final Memorandum of Agreement Guidance for FY2002-2003.

Responsible Office: OECA-OC

B. Implement National Performance Measurement Strategy (NPMS). EPA initiated the NPMS in 1997 to identify, design, and implement an enhanced set of performance measures for assessing the environmental improvements resulting from EPA's enforcement and compliance assurance activities. Through the implementation of the NPMS, EPA, the States and the public can examine the relationship between activities and results, and help identify how strategies and activities need to be changed or applied to produce the best possible environmental results.

The NPMS includes measures of outcomes (results) besides outputs (program activities). This set of measures, known collectively as the Performance Profile, includes the following measures of environmental results or outcomes:

- Noncompliance rates for selected regulated populations;
- Environmental and human health improvements from compliance assurance and enforcement activities;
- The disclosure and correction of violations using EPA's compliance incentive policies;
- Timeliness of return to compliance by significant violators; and
- Recurring or new violations by significant violators.

The Profile also includes the following output measures:

- Number of inspections and investigations conducted;
- Number of enforcement actions taken;
- Compliance assistance provided; and
- Capacity building efforts.

In April 1999, EPA began collecting data to support the measures. Subject to the FY2000-FY2001 budget process, the second and final phase of implementation will begin by FY2000, making all measures fully operational by the end of FY2000. In addition, EPA is making available approximately \$1 million to eight States to support the states' development and implementation of outcome measures.

Milestones: March 1999 — Publish Guide for Measuring Compliance Assistance Outcomes.

March 1999 — Begin collecting outcome data for self-disclosures (e.g., pollutants reduced through self-correction of disclosed violations).

June 30, 1999 — Make funding decisions for cooperative agreements to States for evaluating of outcome measures.

April 1 through September 30, 1999 — Begin using certain measures to assess performance, e.g., capacity-building efforts provided to State, local, or tribal programs.

April 1 through September 30, 1999 — Select five (5) populations for the development of statistically valid compliance rates.

October 1999 — Full set of Performance Profile measures operational. Additional measures to assess performance will include use of statistically valid compliance rates for selected regulated populations.

FY2000 — Region's II implementation of inspection conclusion data sheet.

FY2000-FY2001 — Produce statistically valid compliance rates for additional populations of regulated entities.

Beginning FY2001 — Post results of selected measures on the Internet.

Responsible office: OECA's Immediate Office and OC.

C. Issue Environmental Performance Information on Selected Sectors. As EPA's first step toward integrating and providing greater public access to more environmental information, the Agency released the Sector Facility Indexing Project (SFIP) to the public last year. In the first phase of the SFIP, EPA profiled approximately 650 individual facilities in five industrial sectors. This project gives citizens the ability to access on the Internet multi-media environmental data about a facility, such as compliance with federal regulations, chemical releases, and spills. Information about the location and production capacity of each facility, and information on the population of the surrounding area is also available.

Subject to the availability of funds, EPA may undertake a second phase of SFIP. Phase II of the SFIP would identify additional sectors for profiling and, similar to Phase I of SFIP, would provide detailed information to the public about the performance of facilities in their communities, inform regulated entities how their performance compares to other facilities in the same sector, enable EPA to identify and address sector-wide problems, and inform financial and insurance institutions of the compliance record and environmental performance of particular facilities within a given sector.

Milestone: June 1999 — Completed input from stakeholders on Phase I of the SFIP and issue evaluation report.

Phase II SFIP is an important priority for EPA. The timing for this expansion, however, is contingent on the availability of funds. EPA will set milestones for implementing Phase II at a later date.

Responsible Office: OECA-OC

D. Publish Compliance Data on the Internet. With the creation of EPA's new Information Office, EPA is making significant commitments to improve the means by which the Agency collects, organizes, and makes information available to the public. In addition, EPA's enforcement and compliance assurance program is upgrading the national databases that house EPA and State compliance assurance and enforcement data and is working with its State partners to improve the quality of that data. Subject to the FY2000-FY2001 budget process, EPA's enforcement and compliance assurance program will continue to work with its State partners on how best to release the data contained in its databases relating to compliance and environmental performance.

Milestones: Putting compliance data on the Internet is an important EPA priority. The timing for this project, is contingent on the availability of funds.

Responsible Office: OECA-OC, OPPA

E. Evaluate the Effectiveness of Compliance Assistance, Compliance Incentives, and Enforcement Activities. During the last five years, EPA and its State partners have undertaken a mix of strategies aimed at achieving and maintaining compliance with environmental requirements. Such strategies range from using compliance assistance or enforcement alone to the use of compliance assistance in combination with compliance incentives and/or enforcement activities. EPA intends to issue a study profiling several approaches used at the federal and State levels and examining the effectiveness of such strategies in achieving compliance, deterring noncompliance, and solving particular environmental problems and areas of noncompliance.

Milestone: November 1999 — Initiate report evaluating effectiveness of selected compliance assistance, compliance incentive and/or enforcement strategies.

December 2000 — Finalize report.

Responsible Office: OECA-OPPA

F. Publish Primer on Environmental Enforcement and Compliance Assurance Program. EPA will develop a plain English guide to increase the understanding of the public, regulated entities, and environmental and grassroots organizations regarding EPA's compliance assurance and enforcement program. For example, the primer will describe EPA's compliance assistance efforts and the compliance incentives offered by EPA; how EPA decides to take formal enforcement; how the enforcement process works from the point of inspection through the conclusion of a case by judgment or settlement; why penalties go to the U.S. Treasury and not to EPA; and the results EPA achieves through its compliance assurance and enforcement program.

Milestones: December 1999 — Issue Final Primer on EPA's Environmental Enforcement and Compliance Assurance Program.

Responsible Office: OECA-OPPA

CHAPTER V. INNOVATIVE ENFORCEMENT APPROACHES

This chapter commits the Agency to strengthen its enforcement and compliance assurance program by expanding, in consultation with its State partners and stakeholders, innovative approaches to compliance and enforcement. This means that EPA will continue to pursue new approaches to maximizing environmental compliance. For example, EPA will build on its initial efforts to integrate compliance assistance, compliance incentives, compliance monitoring and enforcement by making routine use of such integrated strategies for certain priorities. The enforcement and compliance assurance program will also take action to (1) establish a single hotline for citizen complaints; (2) publicize innovative Supplemental Environmental Projects (SEPs); and (3) promote community involvement in the development of SEPSs.

A. Expand Use Integrated Enforcement Strategies That Combine Compliance Assistance, Incentives, Monitoring, and Enforcement. EPA will expand its use of integrated strategies to address the priorities of the enforcement and compliance assurance program. EPA's experience has shown that these techniques have been effective in addressing environmental and compliance problems. EPA will analyze the appropriateness of integrated strategies for each program priority and where appropriate, implement these strategies in partnership with States through the Regional/State planning process. These integrated initiatives would complement our ongoing compliance assurance efforts by addressing environmental priorities associated with major regulations, compliance problems, or sectors. For example, while an integrated approach may be appropriate for a sector, if the violations of a particular regulated entity within that sector threaten the environment or human health, EPA may pursue enforcement if necessary to prevent or stop any actual harm.

The initiatives will be tailored to the particular compliance issue involved and include, as appropriate, a mix of the following:

- Targeted compliance assistance (in addition to the general compliance assistance information that the Agency provides);
- Compliance incentives, such as a window of opportunity to audit, disclose, and correct past or ongoing violations, and receive penalty waivers or reductions in accordance with EPA's audit and small business policies;
- Compliance monitoring; and/or
- Targeted enforcement actions.

The sequencing and use of these elements may vary depending on the circumstances surrounding the particular priority. For example, with respect to a recently promulgated regulation (e.g., the Safe Drinking Water Consumer Confidence Report Rule), EPA typically would conduct compliance assistance first, perhaps followed by an opportunity to audit, disclose, and correct violations, and/or compliance monitoring, and take enforcement actions as appropriate. If the priority involves an existing regulation, it may be more effective to undertake a combined targeted enforcement and self-audit approach.

Milestone: June 2000— Develop the appropriate strategy for each priority area and begin implementation. For the FY2002 - FY2003 planning cycle, and for

future planning periods, develop combined enforcement strategies as follows.

January and February of the year preceding two-year cycle —

Consult with State and tribal partners and other stakeholders to identify key strategic priorities (e.g., for FY2002-03 cycle, consult in Jan.-Feb. 2001).

April in the first year of the two-year cycle — Develop appropriate strategies for each priority (e.g., for FY2002-03 cycle, develop strategies by April 2002).

Responsible office: OECA-ORE, OC and Regions

B. Establish a single hotline for citizen complaints. The enforcement and compliance assurance program will establish a nationwide toll-free number to receive and respond to tips and complaints from the public. This hotline would log tips, track them, and determine the appropriate referral to Regions, States, or others.

Milestone: Establishing a “tips” line is an important priority for EPA. The timing for this project, however, is contingent on receipt of funding.

Responsible office: OECA-ORE

C. Issue guidelines for community involvement in Supplemental Environmental Projects. The enforcement and compliance assurance program will draft a new guidance establishing a process for involving communities early in the settlement of an enforcement action, so that they can suggest or provide meaningful input on Supplemental Environmental Projects (SEPs). The enforcement and compliance assurance programs currently have a workgroup effort underway to develop this guidance.

Milestone: March 2000 — Issue guidance.

Responsible office: OECA-ORE and Region 4

D. Publicize Innovative SEPs. The enforcement and compliance assurance program will publicize innovative supplemental environmental projects undertaken pursuant to EPA’s Supplemental Environmental Projects Policy for encouraging certain SEP projects, for example innovative projects to prevent pollution, encourage citizen monitoring, and provide training and technical support to the regulated community.

Milestone: February 1, 2000 — Issue bulletin.

Responsible office: OECA-ORE

CHAPTER VI. CONCLUSION

The five-year anniversary of the reorganization of EPA's enforcement and compliance assurance program gave EPA a good opportunity to review the effectiveness of the program and to identify opportunities for improvement. The two conferences held in early 1999, plus other stakeholder discussions, produced many valuable ideas for maximizing the program's effectiveness.

The ideas adopted by this Action Plan arose from a productive dialogue with EPA's stakeholders, and EPA will continue to seek the views of stakeholders during the implementation of the Action Plan. The Agency looks forward to following through on the commitments in the Action Plan, and working with stakeholders to improve the enforcement and compliance assurance program.