

The Environmental Leadership Program

The ELP Framework

As part of the U.S. Environmental Protection Agency's (EPA) ongoing efforts to improve environmental performance, encourage voluntary compliance, and build working relationships with stakeholders, EPA developed the Environmental Leadership Program (ELP). Initiated in April 1995, the one-year pilot program has been completed, and EPA plans to launch its full-scale Leadership Program in late 1997.

WHAT ARE THE GOALS OF THE ELP?

The **goals** of the Environmental Leadership Program include:

- Better protection of the environment and human health by promoting a systematic approach to managing environmental issues and by encouraging environmental enhancement activities (e.g., biodiversity, energy conservation);
- Increased identification and timely resolution of environmental compliance;
- Multiplying the compliance assistance efforts by including industry as mentors; and
- Fostering constructive and open relationships between agencies, the regulated community, and the public.

WHO MAY BE ELIGIBLE TO BE AN ELP PARTICIPANT?

Any public, private, or federal facility that meets the following ELP criteria for environmental leadership can apply to be an ELP participant.

- A facility is expected to have a mature environmental management system (EMS) that conforms to the ELP EMS. The criteria for an ELP EMS are outlined in the ELP EMS fact sheet (EPA 305-F-96-011).
- A facility should have a compliance and EMS auditing program. This can be demonstrated by a facility submitting or making available during the on-site review its facility-wide compliance audit results and EMS information (data or results documentation) from the past 2 years.
- As part of its EMS, a facility should implement community outreach/employee involvement programs. Such programs foster the development of relationships between facilities and two of their major stakeholders--local communities and employees.
- Federal facilities need to verify that their parent Agency endorses the *Code of Environmental Management Principles (CEMP)* and briefly describe how the applying facility is implementing the CEMP. ELP has been adopted as the Model

Installation Program for federal facilities under E.O. 12856.

- A history of complying with environmental requirements. Facilities applying to the ELP are requested to include on the application the dates and a summary of the findings from any agency regulatory inspection(s) conducted in the past 2 years.

WHAT ARE THE BENEFITS OF THE ELP?

Benefits to the *Environment* are anticipated from the Program's focus on encouraging environmental enhancement activities, such as environmental restoration projects and product stewardship.

The Program will facilitate an exchange of information and encourage the implementation of best practices related to environmental management systems and pollution prevention activities.

The ELP provides an opportunity to foster constructive relationships between the ELP participants, regulators, and the public. Building productive working relationships among environmental stakeholders may lead to tangible benefits for the environment and public health, especially if regulatory resources can be effectively redirected to focus on environmental "bad actors" and expanded compliance assistance efforts.

The *Formal Recognition* benefit includes:

- Public Recognition - EPA will issue certificates of participation in the ELP and develop programs and activities designed to publicly recognize ELP facilities at federal, regional, state, and local levels.
- Logo Usage - Participants can use the EPA-issued ELP logo in facility (but not product) advertising, on facility equipment and structures, and internally, on stationery, coffee mugs, T-shirts, jackets, etc.

The *Inspection Discretion* benefits include:

- Through the use of their enforcement discretion, participating regulatory entities will reduce and/or modify discretionary inspections.

Due to the leadership and exemplary environmental performance of ELP participants, other benefits, such as expedited permits, longer permit cycles, and streamlined permit modifications may become available at a future time.

WHAT IS THE ELP APPLICATION & SELECTION PROCESS?

Facilities interested in becoming ELP participants should complete a standard application and submit it to EPA for review. There will be a three-month window each year for applying to ELP.

The facility selection procedures include:

- Wherever possible, there will be full participation from other regulatory entities. An ELP Review Team, comprised of EPA (HQ and Regions) and other participating regulatory entities, will conduct the review. The selection process time frame is estimated to be three to four months after the application is received.
- EPA, in coordination with other regulatory entities, will conduct a compliance screen. If any of the following conditions occur, the applying facility will generally not be considered for ELP participation:
 - Any federal or state criminal conviction of facility or corporation for an environmental offense within the past 5 years
 - Appearance of facility or corporation on EPA's delisting/debarment list
 - Delinquent penalties resulting from any enforcement action against the facility
 - Environmental criminal action pending or under investigation against facility or corporation
 - Pending federal or state environmental judicial action against facility (including a facility not having a minimum three-year history of complying with the schedules/

requirements of an existing consent decree or settlement agreement)

- Pending federal or state environmental administrative action against facility (including a facility not having a minimum three-year history of complying with the schedules/requirements of an existing administrative order or agreement).

Other factors will be evaluated and considered on a case-by-case basis. These include:

- Violations within the past three years that presented an imminent and substantial endangerment or a serious actual harm
- History as a Significant Non-Complier (as defined by EPA media programs)
- Repeat violations as defined by EPA's *Incentives for Self-Policing Policy (60 FR 66706)*
- Filed citizen suits
- Criminal conviction for an environmental offense against an individual officer or employee within past 5 years
- Environmental criminal action pending or under investigation against an individual officer or employee.
- EPA will publish in the *Federal Register* a list of facilities applying to ELP for a 30-day public comment period.
- The facility will be responsible for notifying the community of their application to ELP.
- An independent third-party environmental auditor (which can be EPA or State staff) will verify that the ELP EMS requirements have been met.
- The final step in the ELP application process is an on-site review of the applying facility by the ELP Review Team. The third-party ELP EMS verification may be included in the on-site review.
- An ELP Selection Committee will review all recommendations and make the selections.
- ELP participation officially begins after an ELP Leadership Agreement is signed by all parties (the facility, EPA, and other participating regulatory entities).

HOW WILL PARTICIPANTS MAINTAIN ELP STATUS?

During the six-year cycle, participants will be expected to maintain certain commitments, including:

- Continuing the facility's ELP EMS and Community Outreach/Employee Involvement programs
- Implementing a Mentoring Program
- Conducting compliance and EMS audits in years 2 and 5 of the ELP participation cycle using auditors who meet the ELP auditor qualifications
- Preparing and submitting an Annual Environmental Performance Report to EPA and the other participating regulatory entities)
- Abiding by the Enforcement Response Guidelines.

WHAT ARE THE ELP EMS CRITERIA?

The ELP Environmental Management System (EMS) is an integrated, structured, and systematic approach for identifying significant environmental impacts from a facility's activities, products, and services along with improvements necessary to:

- Achieve compliance with all relevant regulatory and statutory requirements
- Continually improve the facility's EMS and its overall environmental performance
- Implement pollution prevention activities and practices as an integral part of the EMS
- Communicate effectively with outside stakeholders on the facility's EMS and its performance.

All of these activities are accomplished by first assessing the facility's impact on the environment, reviewing the activities that address those impacts, confirming implementation of the activities, and then measuring and evaluating their effectiveness. To participate in the full-scale ELP, a facility should demonstrate it has had an effective EMS in place for at least 2 years. This is to indicate that the EMS is mature (e.g., has gone through an initial "shake-

down" period in which system weaknesses were identified and corrected).

The ELP EMS criteria are based on an EMS with the characteristics of ISO 14001, an international environmental standard that was published in September 1996, but with more specificity regarding compliance assurance and a few other elements. A copy of ISO 14001 can be obtained from the American National Standards Institute (ANSI). {Please see the "For More Information" section for ANSI's address.} The purpose of ISO 14001 is to provide organizations with the elements of an effective EMS that can be integrated with other management requirements to help organizations achieve environmental and economic goals. It was developed to raise the floor for consistency in managing environmental responsibilities. The overall goal of ISO 14001 is to support environmental protection and prevention of pollution in balance with socio-economic needs.

For ELP, there are certain specific activities that should be implemented through a facility's EMS. These activities are compliance assurance, community outreach, pollution prevention, and environmental enhancement. Facilities will be expected to conduct self-audits and track regulations to ensure compliance with environmental requirements on a continuous basis. This should provide EPA and the public with the desired assurance that facilities are meeting their environmental responsibilities. ELP will not create a conflict with facilities trying to become certified under ISO, nor will it require certification or registration under ISO.

To help facilities understand and implement the ELP EMS, EPA has developed a guideline document. This same document will be utilized by the EPA to evaluate a facility's EMS under the ELP.

WHAT ARE THE ELP COMPLIANCE/EMS AUDIT GUIDELINES?

ELP facilities are expected to conduct compliance and environmental management system (EMS)

audits either separately or combined. Compliance audits should be facility-wide and address all environmental regulatory requirements. EMS audits should evaluate the performance of the EMS against ELP and site-specific EMS objectives, and identify needed improvements.

- Compliance and EMS audits should be conducted at the facility, at a minimum, in years 2 and 5 of a 6-year cycle and in accordance with the ELP Audit Guidelines. Audit results should be provided to EPA in accordance with ELP Audit Guidelines in the Annual Environmental Performance Report or within 60 days after the conclusion of on-site audit activities, whichever comes first.
- Facilities may use internal or external environmental auditors that meet ELP auditor qualifications. An *internal environmental auditor* is an individual within the entity being audited who is responsible for the environmental audit and includes an auditor from a corporate office, the facility that is being audited, or another facility within the corporation. An *external environmental auditor* is an individual that has no relationship, for example through work, ownership, or personal relationship, with the entity that is being audited.
- When an internal environmental auditor is used, a third-party observer that meets ELP auditor qualifications should observe the ELP audits.

WHAT ARE THE ELP AUDITOR QUALIFICATIONS?

Auditors participating in the ELP are expected to have technical knowledge and experience commensurate with the scope of the audit they are conducting or observing. Qualified auditors conducting/observing ELP audits should meet the following criteria:

- Auditors should have either formal training or on-the-job training in the following areas:
 - Environmental issues likely to be associated with the processes and related management issues

- Applicable environmental laws, regulations, and related documents
- Environmental management systems and standards
- Audit practices, processes, and techniques
- Technical, scientific, and legal terms and concepts
- Environmental science and technology.

In addition, auditors should have on-the-job training for a total of twenty equivalent work-days of auditing, and participated on a minimum of four environmental compliance and/or EMS audits. This on-the-job training is expected to occur within three consecutive years. Where there is substantial risk of exposure to chemical hazards, auditors should have formal training in health and safety and participate in a medical monitoring program.

- Auditors should have the following personal attributes and skills:
 - The ability to clearly express concepts and ideas, orally and in writing
 - Strong observational, organizational, listening, and communication skills
 - The ability to maintain independence and objectivity
 - The ability to reach sound judgement based on objective evidence.
- Auditors should participate in refresher training as necessary to ensure that their experience in the conduct of EMS and/or compliance audits is current.

ELP participants are responsible for demonstrating that auditors used to perform the ELP EMS or compliance audits meet the above qualifications.

WHAT IS THE ELP ANNUAL ENVIRONMENTAL PERFORMANCE REPORT?

The ELP Annual Report is intended to provide a summary of the ELP facility's environmental performance for each year of its participation. This report will be available to the public. It should, at a minimum, include:

- Information on the facility and its environmental impacts
- EMS objective, goals, and targets
- Audit results (required only for years 2 and 5)
- EMS results and measures for the year (including instances of noncompliance that are otherwise not required to be reported)
- Whether any Agency inspections occurred and, if so, the results
- Violations/exceedances required to be reported
- Community outreach and employee involvement
- Mentoring activities.

The Annual Report should be certified by a senior facility manager.

HOW WILL NONCOMPLIANCE ISSUES BE ADDRESSED?

The following outlines the proposed approach in addressing issues of noncompliance during participation in the full-scale ELP:

- ELP participants will follow all reporting requirements mandated by federal and regulatory entities' law, permit conditions, consent decree or order¹. The ELP Leadership Agreement may include modifications to such requirements consistent with other Agency policies. Participants will be expected to disclose all instances of environmental noncompliance detected and corrected in the Annual Report. EPA or the appropriate participating regulatory entity will inform the participant facility in writing whether penalty mitigation for the disclosed noncompliance is appropriate.
- Participants will generally have 60 days to correct noncompliance, unless they are required by law to correct noncompliance in a shorter period of time. The correction period applies to noncompliance detected during any EPA, State or local inspection, identified through the facilities' management system, or recognized during ELP required audits. The 60-day correction period will begin on the date of detection of the noncompliance. During that period, participants shall correct the noncompliance, including prevention of recurrence and remediation of harm to human health or the environment. Where the facility detects noncompliance that presents imminent and substantial endangerment to human health or the environment, the facility must notify all the signatories to the Leadership Agreement immediately, and correct the noncompliance immediately, including prevention of recurrence and remediation of harm.
- Within 60 days of detection, participants must describe in writing any noncompliance (required to be reported or otherwise) that cannot be

corrected in 60 days, to EPA and the participating regulatory entities. If the noncompliance cannot be corrected within 60 days of detection, each case will be reviewed to determine if the correction period may be extended for an additional 60 days, or other appropriate time period. The extension should be requested in writing and be submitted to the federal and other participating regulatory entities.

EPA recognizes that some noncompliance can and should be corrected immediately, while others (e.g. where capital expenditures are involved), may take longer than 60 days to correct. When reviewing the extension request, EPA and the regulatory entities will review each case to determine if substantial steps were taken to ensure correction and remediation efforts were taken promptly. Substantial steps include applying for necessary permits, securing financing, ordering equipment, and other similar actions.

If the request is approved, the EPA, the other participating regulatory entities, and the facility will commit in writing to a new schedule that will include the necessary facility actions to ensure compliance with the law, prevent recurrence of the violation(s), and remediate any environmental harm caused by the violation(s). EPA and the other participating regulatory entities reserve the right to verify, through inspection or other means, that the noncompliance has been corrected.

- EPA and participating regulatory entities will not proceed with a civil penalty action unless the violations:
 - Are criminal in nature
 - Result in serious actual harm
 - May present imminent and substantial endangerment to the public health or the environment
 - Are recurrences of violations for which a prior enforcement response has been taken or for which the facility has previously received penalty mitigation by EPA, State or local agency
 - Are of a specific term(s) of any order, consent agreement or plea agreement
 - Remain uncorrected after the 60-day extension
 - Result in an economic benefit which has accrued or been realized as a result of the

¹ These guidelines do not supersede participant facilities' requirements of any consent decree or order.

noncompliance. (Economic benefit will be determined under the applicable EPA policies on a case-by-case basis. EPA and other participating regulatory entities may choose to waive a penalty due to the insignificant amount of any economic benefit).

- EPA and the other participating regulatory entities retain their enforcement discretion to review all noncompliance (whether they are reported under the ELP Enforcement Response Guidelines or discovered otherwise) to determine whether an enforcement response is appropriate. If an enforcement response is determined to be appropriate during participation in the ELP, the applicable Agency enforcement response policies will apply.

WHY WOULD AN ELP TERMINATION/SUSPENSION OF PARTICIPATION OCCUR?

If an ELP participant fails to maintain the expected level of environmental performance as defined by ELP, the facility may be terminated or suspended from participation in the ELP. Examples of activities that may result in termination or suspension include:

Termination:

- Material nonconformance to ELP requirements
- Any federal or state criminal conviction of the corporation for an environmental offense
- Appearance of facility or corporation on EPA's delisting/debarment list
- Delinquent penalties resulting from previous enforcement action against the facility
- Federal or state criminal action pending against facility or corporation for an environmental offense.

Suspension:

- *Immediate Suspension:*
 - Violations that present an imminent and substantial endangerment or a serious actual harm
 - Pending federal or state environmental judicial action

- Pending federal or state environmental administrative action.
- *Conditions that could lead to possible suspension:*
 - Repeat violations as defined under EPA's *Incentives for Self-Policing Policy*
 - Filed citizen suits
 - Environmental criminal action pending against an individual officer or employee.
 - Criminal conviction for an environmental offense against an individual officer or employee
 - Investigation of falsification or misrepresentation of the performance of the facility/entity's EMS
 - Misuse or misrepresenting environmental performance in advertising or marketing claims
 - Failure to live up to tracking and reporting requirements
 - Failure to live up to the ELP EMS principles.

Notification:

- To the extent possible, EPA intends to provide the participating facility 30-days notice of intent to terminate or suspend its participation. This written notification will indicate an opportunity to discuss the decision and the reinstatement process as detailed below.

Withdrawal:

- Any signatory to an ELP agreement may end their participation in the ELP by providing 60 days written notice.

Reinstatement:

- If a facility has been terminated or voluntarily ends its participation in ELP, reinstatement requires reapplication and successfully meeting all of the application and selection criteria. If a facility has been suspended, EPA and the other regulatory entities will make a case-by-case determination of whether, when, and under what conditions the facility may be reinstated. This will be conveyed in writing to the facility.

WHAT ROLES WILL EPA AND OTHER REGULATORY

ENTITIES PLAY IN THE ELP?

expedited permitting, etc.) from both EPA and the State to the facilities.

For the ELP to be truly effective, facilities should be recognized as environmental leaders by EPA and other participating regulatory entities, as appropriate. The program has been designed with the expectation that EPA and the State, at a minimum, (but also other applicable levels of government) will work in partnership to review applications, participate in on-site reviews, select facilities, and implement the program. It is anticipated there will be a signed agreement between EPA and other participating regulatory entities detailing respective roles and responsibilities. A model EPA-State agreement has been developed.

Several States have or are in the process of developing their own environmental leadership programs. It is hoped that EPA and State efforts can be coordinated to provide the greatest benefit to qualified facilities, minimize duplication of effort and confusion resulting from multiple, similar programs, and conserve limited regulatory resources.

To partner in the implementation of ELP, other interested regulatory entities are encouraged to sign an Agreement with EPA agreeing to the program criteria. If a regulatory entity wishes to add criteria or identify additional benefits, this may be included in the Agreement.

Besides selecting the facilities, EPA and the States will maintain an oversight role. It is important to remember that EPA and States are not surrendering or diminishing their authority to administer/enforce environmental laws. EPA will inspect facilities in cases of:

- Imminent and substantial endangerment to public health or the environment
- Natural resource damage
- Receipt of a tip, complaint, or other information concerning potential civil or criminal violations
- Due cause.

EPA hopes to partner with the States to offer benefits (recognition, reduced inspections,

NEXT STEPS:

- *Federal Register* notice of proposed full-scale program in Fall 1997
- Anticipated availability of the application for the program in late 1997/early 1998 through the Pollution Prevention Information Clearinghouse (PPIC) or via the ELP web site.
(<http://es.inel.gov/elp>)

FOR MORE INFORMATION CONTACT:

*Tai-ming Chang, Director
Environmental Leadership Program
U.S. EPA
OECA/Office of Compliance
401 M Street, S.W. (2223-A)
Washington, DC 20460
tel.: (202) 564-5081
fax: (202) 564-0050
<http://es.inel.gov/elp>
chang.tai-ming@epamail.epa.gov*

*The American National Standards Institute (ANSI)
may be contacted at:*

ANSI
11 West 42nd Street
New York, NY 10036
Tel: (212) 642-4900
Fax: (212) 302-1286
E-Mail: INFO@ANSI.ORG
Internet: <http://www.ansi.org>

*The Pollution Prevention Information Clearinghouse
(PPIC) may be contacted at:*

PPIC
U.S. EPA
401 M Street, SW, MC 7407
Washington, DC 20460
Tel: (202)260-1023
Fax: (202)260-0178
ppic@epamail.epa.gov

