

SUMMARY OF PROCEEDINGS

ENVIRONMENTAL AUDITING CONFERENCE
FOR FEDERAL FACILITIES
IN WESTERN STATES

Sponsored by the U.S. Environmental Protection Agency

February 16-17, 1984

Sheraton Denver Tech Center

Prepared by:

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FOR FEDERAL FACILITIES IN WESTERN STATES

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1.0 INTRODUCTION

On February 16-17, 1984, the United States Environmental Protection Agency (U.S. EPA) Headquarters and EPA Region VIII co-sponsored an Environmental Auditing Conference in Denver, Colorado for Federal Facilities in Western States. The purpose of the conference was to demonstrate how audits operate and what they can do, indicate ways Federal agencies can establish or up-grade audit systems, and begin to transfer audit experience from companies and agencies with established audit programs to Federal facility managers.

The conference was coordinated by JRB Associates of McLean, Virginia and attended by 134 conferees. Speakers were selected for their Environmental Audit (EA) expertise, their role in Federal facility compliance, or both. They included representatives from Federal facilities, industry, Federal and State government, consulting firms, the press, and public interest groups. Attendees came primarily from Federal facility field and headquarters offices but also included State and Federal government representatives. Formal and informal conferee reactions indicate that the conference more than met its objectives. Approximately 96% of attendees who returned formal evaluation forms thought it would help them do their jobs better.

The following sections review the conference proceedings. Section 2.0 is an executive summary of the major concerns, issues, and questions that arose with respect to EA at Federal facilities. Section 3.0 summarizes major speaker presentations.

Such summaries inevitably fail to do justice to the humor, energy and nuances of the kind of give-and-take which characterized much of this workshop. Just as inevitably, a full transcript is too bulky and expensive to provide. We have attempted to capture the essence of participants' remarks and conclusions, giving due weight to how views appeared to evolve and modify each other over the course of the conference. We apologize in advance for any errors, omissions or misplaced emphases.

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2.0 EXECUTIVE SUMMARY

This section reviews proceedings of the Conference on Environmental Auditing for Federal Facilities in Western States, co-sponsored by U.S. EPA Headquarters and Region VIII offices on February 16-17, 1984 in Denver, Colorado. It focuses on major issues, concerns, and questions that arose during the conference that should be considered when formulating policies and strategies relative to Federal facility compliance and Environmental Auditing (EA).

2.1 MAJOR FEDERAL FACILITY COMPLIANCE CONCERNS

Major Federal facility concerns focused on general enforcement strategies and the possible impact EA programs may have on enforcement actions. These items included:

1. Lack of a coherent, consistent EPA Federal facility policy. Representatives of Federal facilities noted that prior to the conference, they were not aware of a coherent enforcement policy used by EPA in dealing with Federal facilities. Some also noted that enforcement policies discussed during the conference were unclear, conflicting, and inconsistent with their past experience. This is an issue of concern because it: 1) removes the predictability that the regulated community relies upon to justify expenditures for pollution abatement projects; and 2) results in poorly-targeted resources.
2. Lack of enforcement at Federal facilities. While there were notable exceptions, representatives from Federal facilities as well as State and Federal regulatory bodies noted that there has been a general lack of enforcement at Federal facilities across the board. Enforcement has been lacking in all media. This issue is of concern because Federal facility environmental managers have problems justifying expenditures for pollution abatement and EA projects because of an implicit "clean bill of health" suggested by no enforcement actions, despite the existence of inadequate environmental management programs.
3. Uncertainty as to EPA's use of internal reports generated through EA programs. Federal facility representatives stated they received conflicting information during the conference with respect to exactly how EPA will use reports generated from EA programs. The major concern is that EPA will use the reports in enforcement actions addressing problems noted in the audit report to the detriment of the facility, despite good faith efforts to self-audit. There is heightened concern following recent "get tough on Federal facility" statements from the Administrator and his staff. This issue is of concern because it may: 1) discourage the adoption of EA; 2) encourage the production of uncritical or less detailed EA reports; or 3) encourage the keeping of double books (one "real" and the other for EPA consumption).

4. Concern over EPA's understanding of and reaction to Federal facility budget cycles. A significant number of attendees were concerned about possible EPA actions where problems discovered through an EA may only be addressed over 5 years under the Federal facility budget cycle. The concern is that EPA will not understand and tailor possible enforcement actions to this "reality". Without this appreciation on the part of EPA, EA programs are less likely to be adopted.

However, it should be noted that some Federal facility representatives felt that information provided by EA can actually help reduce budget delays through problem documentation and prioritization.

5. Potential for EPA to require EA. Federal facility representatives variably supported or were critical of potential regulations requiring Federal facility implementation of EA programs. Those who supported the idea thought that it would ease their selling job to management. Those who were critical suggested that it could force inappropriate standardization and mandate what should be a voluntary, flexible management tool.

2.2 MAJOR ENVIRONMENTAL AUDITING CONCERNS

Major environmental auditing concerns focused on program initiation and report follow-up. These items included:

1. Difficulty in securing initial management support, funds, expertise, and personnel. Federal facility representatives contemplating the implementation of EA programs were concerned that securing support and resources could be difficult. These concerns elicited several suggestions but could remain as serious obstacles to EA program implementation.
2. Uncertainty about funding to address discovered problems. Existing budgetary discretion led many Federal facility representatives to conclude that problems discovered by EA would either not be addressed or be addressed only as funds become available through the normal budget cycle. This is of concern because documentation of unresolved problems over a long period of time would constitute knowing violations of applicable regulations. This problem would be aggravated with more effective EA programs and decreased funds.
3. Concern about addressing unknown and uncertain risks. Representatives expressed concern about how to evaluate or audit the efficacy of environmental management systems directed at unquantified or unregulated hazards.

4. Lack of a tie between personnel and environmental performance. Federal facility representatives stated that top management would be more receptive to EA and environmental management in general if they had a "personal stake" in environmental performance. They suggested that environmental performance be made a regular part of management's personnel performance reviews.

2.3 MAJOR QUESTIONS FOR FUTURE RESOLUTION

Resolution of several questions relating to EPA policy will have an important impact on existing or potential EA activities at Federal facilities. These questions included:

1. How will EPA ask for and/or use the EA results? Federal facility representatives voiced a general desire not to have EPA mandate the turn-over of raw audit data or audit reports. They also expressed serious misgivings about the potential use of EA report results in subsequent enforcement actions. Federal facilities seem to want to use the EA process as an internal management tool while preserving the option to involve EPA in problem resolution.
2. What will be the reporting obligations for EA programs? Representatives were concerned about when and whether audit report results, especially those concerning regulatory violations, must be reported to regulatory authorities.
3. Are there alternatives to enforcement for firms with EA programs? Federal facility and regulatory agency representatives suggested that a significant incentive to EA program adoption would be alternative, less burdensome enforcement actions if the facility had an EA program. This was felt to be especially relevant when enforcement actions result from notification of violation(s) through an EA program. Additionally, inspections could be targeted at facilities without EA programs.
4. What are EPA's enforcement procedures? There was a great deal of concern regarding EPA's new enforcement procedures. Specifically, Federal facility representatives were unclear as to what circumstances would trigger each step up the "enforcement ladder". There was also concern regarding the status of efforts to identify a Federal facility representative parallel to the "responsible corporate officer." This latter issue relates to general environmental management (e.g., who signs the RCRA permits) as well as the prospect for securing upper management approval for EA.
5. How will EPA view long-term problems? Several Federal facility representatives were concerned about EPA's new enforcement strategy as it applies to problems whose solutions will take several years to fund or implement. This was of specific concern to those with potentially serious problems requiring capital-intensive or unknown solutions (e.g., groundwater contamination) and/or inflexible budget cycles.

6. Will EPA embark on a more vigorous enforcement program? A major obstacle to justifying an EA program is the apparent lack of enforcement efforts directed at noncomplying facilities that could most benefit from EA. More diligent efforts in this area would foster development of EA at Federal facilities.
7. Is a major policy statement on EA forthcoming? Throughout the conference EPA indicated that it was currently unsure of how it might structure future activities around EA and that efforts were underway to develop a coherent policy statement. Depending on the components of such a statement, it would likely have a major impact on those developing EA programs as well as on Federal and State regulatory bodies.
8. How can funds be better secured for EA programs and problem resolution? Federal facility representatives reported that one of the major obstacles in implementing an EA program is securing funds to finance EA or fix problems discovered through an EA. Further guidance on this issue was desired.
9. How can line and top management support be secured? The importance of line and top management support was often cited as critical to the success of an EA program. It was recommended that future follow-up efforts be directed at this group.

3.0 SYNOPSES OF MAJOR CONFERENCE PRESENTATIONS

This section summarizes presentations of major conference speeches and panel discussions, in the order of conference presentation. A more complete transcript is available for review upon request.

Mr. James Lehr, Deputy Director, Office of Air and Waste Management, U.S. EPA Region VIII, arranged for EPA Region VIII/Headquarters conference co-sponsorship and served as overall conference moderator.

WELCOMING ADDRESS

JOHN WELLES

Regional Administrator
U.S. EPA Region VIII

- o One reason we are convening this conference is because Executive Order 12088 directs EPA "to provide technical advice and assistance to executive agencies in order to insure cost effective and timely compliance with pollution control standards."
- o The purpose of this conference is to learn the "what, why, and how" of environmental auditing (EA) from the world's experts in industry, government, and consulting firms.
- o EA is a method of self-assessment and self-monitoring which has been used by private and Federal facilities. It is a "do-it-yourself" concept to enhance the performance of your environmental management system.
- o Some agencies in the Federal government have done a good job of environmental protection; others have not. This conference should help all of us do a better job. Use of EA by Federal facilities will not only set a good example for private facilities and State and local governments, but can play a substantial part in putting our own environmental house in order.
- o EPA is encouraging the development of EA systems without dictating what you must do or when you must do it. We hope you will leave the conference with the motivation and know-how to put environmental auditing into practice.

EPA'S FEDERAL FACILITY PROGRAM

JOSEPHINE COOPER

Assistant Administrator for
External Affairs, U.S. EPA

- o Participation in this conference hopefully begins a new era in our relationship at EPA with Federal facilities. There is a new willingness to cooperate as an alternative to confrontation through non-compliance and enforcement actions. I think that is true on both sides.
- o Environmental results are one of the goals of EPA's new agenda--not merely enforcement. The emphasis is on compliance as an ultimate measure of our success. EO 12088 requires Federal facilities to achieve and maintain compliance with Federal, State, and local environmental regulations.
- o EPA prefers to provide technical assistance and cooperate in compliance efforts but has the requisite will to enforce where good faith efforts and cooperation are lacking.
- o There are problems in Federal facilities' demonstrated ability/desire to achieve and maintain compliance. Congressional and public perceptions of Federal facility compliance are often negative. There is a perception that Federal facilities are not sensitive enough about their environmental effects.
- o Progress has been made but much remains to be done to achieve full compliance. The emphasis has changed from pollution control equipment installation to assuring compliance over time. EA is a currently available and effective tool for use in assuring day-to-day compliance and addressing existing and forthcoming regulations.
- o EPA inspection results and especially lack of notices of violations should not be relied upon as a measure of compliance. EPA resource limitations and inspection strategies make it impossible for EPA to inspect even all the major Federal facilities during a given year. For example, fewer than 7% of the total Federal facilities were inspected for Water Act compliance last year.
- o EPA's new Federal facilities compliance program will center around cooperation to promote compliance and includes:

1. Technical advice and assistance on regulations, pollution control requirements, management initiatives, etc.
 2. Compliance monitoring through on-site inspections (1/year for major facilities and where violations are suspected for others) and review of self-monitoring reports (as they are received for major and significant minor facilities and when violations are suspected for other facilities).
 3. Fiscal planning assistance through advice on needed pollution control measures, evaluation of overall fiscal plans submitted to EPA in accordance with OMB Circular A106, and participation in project design and construction.
 4. Resolution of non-compliance disputes by escalating problems when necessary, by sending NOV's, or filing administrative orders. Actions are initiated by the Regional offices. If the dispute is not resolved, headquarters will become involved and will try to resolve it with the parent agency. OMB is the final arbitrator.
-
- o Regional Federal facility coordinators are the focal point for EPA's Federal facility program. Regional coordinators will play a more active role than in the past and will have a large responsibility for carrying out a wide range of activities.
 - o EPA is interested in joint pursuit of new Federal facility compliance tools such as EA. EA is one way that we can work together to find new solutions to our remaining pollution problems and demonstrate to the nation that the Federal government is committed to environmental goals.

OVERVIEW OF ENVIRONMENTAL AUDITING

JOHN T. FUNKHOUSER

Director, Center for Environmental Assurance
Arthur D. Little, Inc.

- o Since EA can mean many different things, it is important to define what your EA program will be before you begin. It usually is a defined mix of assessment (e.g., expert judgement) and verification (e.g., comparing the current status against a template, standards, etc.).
- o EA is only one part of and cannot substitute for your environmental management program. The more external functions your EA program encompasses, the less effective it will be at auditing.
- o EA is far less rigorous than financial auditing but is continuing to evolve. The trend is to make it more rigorous and include more verification. In many companies EA has become a review program meant to assure the hazard identification and response system is working.
- o Since the early 1970's EA has been incorporated into the environmental management programs of hundreds and hundreds of companies.
- o EA is being used to manage risks which consist of hazards. The type of environmental management method applied to hazards must be tailored to how much is known about them. Well known hazards can be managed using standard methods and regulations. Lesser known hazards must be managed using best practice and judgement. Hazards which are not understood by the institution are managed using the expertise of outsiders and alternative hazard identification methods. There are also hazards which nobody knows about.
- o Management expectations may dictate the type of environmental auditing approach selected. Management may want to: 1) solve problems as they arise; 2) maintain constant compliance; or 3) manage all risks or all problems.
- o The degree of emphasis on risk management in the environmental management program may dictate the role of environmental auditing. Risk management involves hazard identification, risk assessment, and risk acceptance determinations, as well as risk reduction tactics.
- o Environmental auditing programs can have several goals. The two most important goals cited are compliance assessment and enhancement or accelerated development of environmental control systems.

- o Benefits of EA programs can include overall improvement of environmental management, hazard identification, risk reduction, and enhanced assurance that management systems are working correctly.
- o The degree of independence desired in your EA program will determine whether you use internal or third party teams.
- o Objectives and scope, organization and staffing, audit methodology, audit technologies, audit tools, and audit report are the basic components of an audit program. The objectives influence every other aspect of your EA program. Scope details what it will cover. Organization and staffing refer to who will do it and where in the organization the EA program will be located. Methodology, technology, and tools refer to how it will be done. The audit report refers to what will be reported and who will be informed of the audit findings.
- o The audit methodology includes five basic steps: 1) understanding internal controls; 2) evaluation of their strengths and weaknesses; 3) gathering of audit evidence; 4) evaluation and integration of findings; and 5) reporting of findings.
- o Auditing can be done in different ways to suit individual needs and constraints. There is no right or wrong way to audit.
- o Limitations of auditing include: 1) the diversity of methodologies used prevents strict comparisons; 2) the complexities of environmental risk are not well known; and 3) it may be difficult to judge which problems are important and which are not.
- o EA will continue to be more widely adopted and its benefits will become more widely accepted. Its future development will likely feature more commonality as both the idea and experience with it mature.

PANEL: PLANNING, STAFFING, AND PREPARING FOR ENVIRONMENTAL AUDITS

OVERVIEW

DORIS E. SANDERS

Manager, Environmental Audit Program
JRB Associates
A Company of Science Applications, Inc.

- o EA is an important and flexible management tool for insuring environmental compliance and protecting human health and the environment.
- o Initial planning for EA programs requires:
 - Goal definition (e.g., "What do I want to accomplish?"). Goals, which may be partially defined by events and/or management directives, should be written down.
 - Definition of resource needs and availability. Resources include funds (How much will it cost?) and people (Who will conduct the audit program). You must also determine where resources will come from. Goals may be influenced by resource assessments. Be creative in trying to answer resource related questions. Think about where extra resources are and how you can access them.
 - Identifying who will approve and support the program, and securing their backing. It also involves defining when is the best time to get your potential allies involved with the program (e.g., at EA program scoping or later on), anticipating possible objections and constraints (e.g., budgetary constraints) and developing response(s) to overcome problems.
 - Defining the type of audit desired. Possible audit types include facility profile (detailing a baseline of the situation), compliance (assessing compliance with respect to applicable regulations), hazard management (assessing the cost-effectiveness of some aspect of the environmental management program), and special purpose (assessing special high priority problems). Most audit programs include some combination of these types.
 - Determining the scope of audit program desired. Possible audit scopes include media/operation, environmental management, program organization and management, current operations, historical operations, future activities, and categorical (e.g., by region, facility type, facility activity, etc.). Most audit programs include some combination of scopes.

- Determination of confidentiality procedures, equipment (e.g., bar-locked files, etc), and oversight needed for in-house and/or third party audit teams.
- o Staffing and organization considerations focus on who will manage the program and where the program will be located in the organization. The EA program should be permanently aligned so it gets due consideration in budgetary decisions. It is important to specifically define responsibilities (e.g., general management, signature authority, etc.) to ensure a smooth running program.
- o Staffing and organization should define if the program will be staffed with internal and/or consultant personnel. The advantages and disadvantages of the selected staffing and organization approach should be recognized and dealt with.
- o Advantages of an internal team can include: familiarity with company and facility; greater flexibility in case of focus change; less up-front costs; and greater control over confidentiality. Disadvantages can include: lack of objectivity; already committed duties; greater management time; and lack of training in EA.
- o Advantages of a consultant team include: more objectivity; greater team stability; less internal management; minimal training needed on EA and established confidentiality procedures. Disadvantages include: lack of facility familiarity; less immediate flexibility in case of focus change; greater upfront funding need; confidentiality oversight removed from facility; suspicion of consultant by staff.
- o A combination of internal and external EA staff may also be used.
- o The expertise of the audit staff, especially the team leader and other team members, is critical to staffing and organizing an audit program. Team members should be selected based on their understanding of audit methodologies, regulatory compliance, process operations, organizational analysis, and environmental impact assessment.
- o Pre-audit preparation is critical to the audit process. It involves scheduling and setting milestones, training of staff, setting the stage within the facility (e.g., convincing the facility that EA is good for them and that they should cooperate), preliminary information gathering (from the facility staff, files, etc.), facility profile development, planning for report writing, and planning for a response to environmental audit results.

PANEL: PLANNING, STAFFING, AND PREPARING FOR ENVIRONMENTAL AUDITS

ALLIED CORPORATIONS ENVIRONMENTAL AUDIT PROGRAM

RALPH E. RHODES

Director, Environmental Surveillance
Allied Corporation

- o Pre-planning is critical to the success of an EA program. The auditor is expected to do what management tells him to do -- complete the audit and make no mistakes. Mistakes undercut credibility within the organization and make the job more difficult the next time around.
- o Allied is a big diversified company with about 450 domestic and foreign locations. This has important implications on how we structure and staff our audit program.
- o The first step in developing an EA program is to clearly define the program's objective. The objective of Allied's EA program is to verify that operations are in compliance with laws and internal policies and procedures. In so doing, other objectives are also met. The objectives should be formally stated so that they can be used as a reference point throughout the program.
- o Identifying the client for whom the EA program is being performed is the next step. At Allied, the primary client is the Board of Directors and the top management of the corporation. However, all who are affected by EA are involved in it.
- o A clear formal or informal delegation of authority is important to the success of an EA program. At Allied, authority has been delegated informally. Authority must be supported by management. Management must also allow the auditor a place in the organization from which he/she can audit effectively and report effectively without obstruction.
- o Independence is critical to an audit program. "Practical" independence can be achieved with an internal staff. Allied's program is internal and is comprised of a corporate surveillance group, representatives from corporate environmental offices, and a third party auditor.
- o Program boundaries must be defined from the beginning. Allied's EA program boundaries are defined by organizational characteristics (e.g., new acquisitions, high risk facility components), geographical characteristics (e.g., U.S. versus foreign facilities), and functional characteristics (e.g., disciplines to be reviewed and origin of the criteria).

- o The EA program must also define the frequency of review/site selection and review procedures. At Allied, site/frequency selection is developed to provide a representative example of business areas, companies, functional areas, etc. Review procedures are similarly designed to provide a representative sample of activities within a specific facility.
- o Important auditor qualifications include objectivity, technical competency, determination, tact, etc. Good communication between the auditor and those being audited is critical. It is important that communication problems between the auditor and the facility be resolved early on. The auditors should also provide feedback about what they are learning during the course of the review, to the persons responsible for the program at the facility.
- o At Allied periodic progress reports, a formal close-out conference, draft reports, and special issue meetings are also used to enhance communications.

PANEL: PLANNING, STAFFING, AND PREPARING FOR ENVIRONMENTAL AUDITS

QUESTION AND ANSWER SESSION

Question - (Directed to Jo Cooper, EPA). Has your program and agenda been brought to the attention of the Secretarial level in Washington?

Answer - Jo Cooper, EPA: Bill Ruckelshaus has spoken with Secretary Hodel (DOE), Secretary Marsh, Bill Gianelli (Corps) and others to ensure that our program gets attention across agencies and within the Executive Branch. Agreements between EPA and other agencies are also being worked out on an agency-by-agency basis for RCRA and Superfund programs.

Question - How often would an agency have to update the EA reports? The cost of up-dating appears significant.

Answer - Lee Herwig and Jo Cooper, EPA: There is no federal requirement for frequency.

Ralph Rhodes, Allied: The frequency is organization and/or facility specific. You should not audit if you are not willing to fix discovered problems. Addressing recommendations rather than the actual audit will likely require the most financial commitment.

Jo Cooper, EPA: EPA would like the audits conducted on a routine and frequent basis to be used as a compliance assurance tool.

Doris Sanders, JRB: The initial audit will be the most costly. Follow-up audits will mainly involve check-ups on responses to noted problems and be less expensive.

Question - (Directed to Ralph Rhodes) Are your audits directed at individual plants and do you have a full complement of audit types to cover diverse activities at Allied?

Answer - Ralph Rhodes, Allied: Yes. However reviews are directed at certain subjects rather than at multiple subjects. Allied does not review every single subject at each location simultaneously.

Question - Please provide a supporting rationale for auditing facilities on a repeated basis. Can I design an EA program to provide me with up-dated information on a facility.

John Funkhouser, ADL: A single audit is only a snapshot. To assess the facility's on-going performance, repeated regular audits must be performed.

Question - (Directed to Ralph Rhodes) How do you respond to non-compliance problems discovered during an audit that take long term capital investments to solve?

Answer - Ralph Rhodes, Allied: The report only identifies problems. Management is responsible for implementing corrective actions.

Question - How are relationships handled with regulatory authorities once such problems are discovered?

Answer - John Funkhouser, ADL: Following notification of problems to operational people, the auditors are removed from the situation. All discussions/negotiations with regulatory agencies are handled by the facility itself.

Question - (Directed to Jo Cooper) Please expand on EPA's willingness to assist in the satisfaction of States when there is a difference between State/Federal hazardous waste regulations.

Answer - Jo Cooper, EPA: As there are few full RCRA delegated states, this issue has not been fully worked out yet.

Question - (Directed to Jo Cooper US EPA) Will not EPA's intention to review the results of audit reports discourage Federal agencies from setting up EA programs?

Answer - Jo Cooper, EPA: EPA wants to be aware of the problems before they get out of the facility. Reports generated by Federal facilities are also not as sensitive in terms of confidentiality as those of the private sector. EPA wants to use the reports to get better compliance and to cooperate with agencies in problem resolution.

Question - The attitude of today's regulatory officials indicates an increased adversarial rather than cooperative relationship when dealing with compliance problems. How do we know that you will not use the audit results to cite us for violations, etc.?

Answer - Jo Cooper, EPA: The EPA has run into some situations where cooperation was lacking and therefore elevated the issue. However, cooperation and dialogue have been and will continue to be emphasized over conflict. The Agency views EA as a tool which can be used to achieve Federal facility compliance without resorting to higher conflict resolution/enforcement avenues. EPA needs a better basis for assessing Federal facility compliance. EA is a tool that helps in this area.

Courtney Price, EPA: EPA will cooperate and negotiate to get results. However, where results are not forthcoming other enforcement tools will be used (e.g., triggering the dispute resolution mechanism and the issuance of administrative orders).

Mike Levin, US EPA: If the purpose of the new Federal facility program is to get better assurance of and statistics on compliance, these statistics can be gotten from other sources than directly from the audit reports. Many measurements of compliance (NOV's, size of penalties, etc.) are artifacts of the system - they do not necessarily represent the performance of a particular facility. The EPA should not be interested in how you do your audit internally; EPA only needs to look at what the reported compliance results are. The presence of an EA system gives more confidence that what should be reported, is being reported. That is all we need to do our job.

Question - (Directed to Ralph Rhodes) Because audited facilities may be encouraged to present a false/altered picture of their environmental management system to make it look better than it is, how do you as an auditor ensure that you really know what the situation is?

Answer - Ralph Rhodes, Allied: The Allied audit system is sufficiently detailed and cross-checked to ensure the true picture is presented. The audit must use several sources to derive conclusions, including review of basic data sources. One of the reasons for our audit program's existence is to confirm what the situation really is.

AN EPA PERSPECTIVE ON ENVIRONMENTAL AUDITING

C. RONALD SMITH

Director, Office of Standards and Regulations
U.S. EPA

- o A unique aspect of EA is that benefits gained through its use as a management tool translate into benefits to the environment. EA may also encourage better targeting of resources in the future; more rational definitions of compliance; and development of improved data bases. The value of EA will depend upon: senior management commitment; the technical quality of audit activities; appropriate procedures; timing; and numbers and types of audit systems.
- o EPA is encouraging the development and implementation of EA for several reasons including:
 - 1. Improved environmental management through a shift away from reactive to affirmative management of pollution problems.
 - 2. Better cooperation through improved EPA confidence in facilities with EA programs and a lessening of confrontational relationships between EPA and the regulated community.
 - 3. Better use of limited EPA resources through enforcement targeting towards those who cannot adequately manage their environmental activities, and away from those who can.
 - 4. The need to assure compliance over time with environmental requirements, after required equipment has been installed.
- o Over the last several years, EPA's thinking on EA has shifted from mandated programs, to voluntary incentive-based approaches to a three-pronged approach of endorsement, analysis, and assistance.
- o EPA is now trying to address disincentives to EA, especially issues relating to confidentiality of internal audit reports. EPA is also trying to evaluate the efficacy of different types of EA programs, helping states and firms interested in EA to structure individual programs, and developing software that will let smaller companies easily find what regulations apply to them and use EA approaches to meet these requirements.
- o EPA is considering the development of a policy statement on EA with respect to:
 - Use of EA in consent decrees.
 - EPA use of EA data and/or reports.
 - Inspection targeting toward firms without audit systems.
 - Variable enforcement responses to firms with in-place EA systems.
 - Confidentiality of EA results.

EPA'S ENFORCEMENT PROGRAM, FEDERAL FACILITY COMPLIANCE,
AND ENVIRONMENTAL AUDITING

COURTNEY PRICE

Assistant Administrator
Office of Enforcement and Compliance Monitoring
U.S. EPA

- o The Office of Enforcement and Compliance Monitoring (OECM) serves four functions:
 - 1. Legal counsel to EPA's enforcement function, responsible for ensuring compliance.
 - 2. Source of technical and legal support for compliance monitoring and enforcement.
 - 3. Manage criminal enforcement program.
 - 4. Primary liason to DOJ, coordinate national cases, focus priorities, and oversee a more decentralized system of case referrals.
- o OECM will take EPA lead in national enforcement and compliance efforts.
- o The fundamental objective of EPA's national compliance/enforcement program is the protection of public health and the environment through fostering compliance at the Regional level. New approaches to compliance such as EA will be initiated and evaluated to achieve compliance.
- o Compliance is EPA's highest priority. Initiatives are designed to:
 - 1. Promote better compliance.
 - 2. Monitor compliance to detect violations.
 - 3. Respond quickly and appropriately to violations.
 - 4. Build public confidence in EPA's compliance and enforcement capabilities.
- o Federal facility managers through the chain of command are morally and legally obligated to maintain compliance, and should be examples for private sector facilities with respect to compliance.

- o Maintenance of compliance and sound environmental management will:
 1. Reduce potential long term clean-up costs.
 2. Enhance public perceptions of Federal facility performance and commitment.
- o EPA will focus on results by:
 1. Measuring real compliance rather than simple violation/excursion/NOV's.
 2. Examining compliance performance against these real measures.
 3. Bringing significant violators into compliance.
 4. Encouraging better compliance through the results produced by these tools.
- o EPA will also promote compliance by ensuring that the regulated community has the best information, tools, and techniques to achieve it. (EA is one such management tool.) EPA will:
 - Develop protocols to assure better quality and reliability of compliance monitoring data.
 - Help provide other tools to enhance, voluntary compliance, which will still have to be primarily relied upon.
 - Rely more heavily on self-monitoring as a tool to screen and identify potential violations. Data sources include water, groundwater, and air monitoring records. However, this reliance also means that deliberate falsification of self-monitoring data will result in prosecution.
- o EPA's interest is your facility's environmental performance rather than how you manage your facility to achieve compliance.
- o EPA does not have all the answers with respect to environmental management and/or EA. But EA is available now and EPA's NEIC Multi-Media Compliance Audit Inspection Procedures manual is a good place to start in thinking about how to structure your EA program.
- o EPA is calling on you, as talented people of conscience, to establish sound environmental management systems that produce better compliance, reduced environmental risk, and a safer, healthier place in which to live.

PANEL: CONDUCTING THE ENVIRONMENTAL AUDIT - THE SITE VISIT

OVERVIEW

RAYMOND W. KANE

Manager, Program Development
Roy F. Weston, Inc.

- o Prior to conducting an audit you must know what your goals are. You should have completed pre-site visit activities to familiarize yourself and the audited site manager with the critical areas the audit will cover. Go over objectives, schedules, and audit team responsibilities, prior to the actual site visit.
- o Review all regulations for their applicability, especially those on State and local levels. Get up-to-date versions through Computerized Environmental Legislative Data System (CELDS), developed and maintained by the Army, and discussions with regulatory authorities. Match regulations with facility activities to define compliance areas.
- o Audits can be conducted by substance by tracking its use (e.g., PCB's), unit processes by following a process, by disposal methods such as wastewater discharge, or by legal requirements, looking at the regulations. A good audit will include all these techniques.
- o There are four basic audit approaches which include record and document reviews, interviews, physical inspections, and sampling analyses and testing.
 - Record and document reviews should focus on major compliance areas and should be carried out first.
 - Interviews should be conducted with understanding and directed to allow maximum information flow from the auditee to the auditor. For example, encourage the facility person to describe operations and methods. Follow-up on his descriptions with further related questions to keep him talking about his operations.
 - Physical inspections, walking through the facility, should include process, waste material, and hazardous substance areas. Inspections should be timed to see critical areas and may be done in association with interviews. Inspections should look beyond the facility line to neighboring areas (the back 40 acres) and contractors with whom the facility does business (e.g., off-site TSD facilities). Common law nuisances for which the company may be liable (e.g., noise, odor, etc.) should also be evaluated.

- Evaluations of sampling, analysis, and QA/QC procedures are more important than actually taking samples while on the audit and the audit team should include people with the expertise needed to evaluate these procedures.
- o Audits can extend beyond regulatory compliance and evaluate emergency response capabilities, possibly through mock drills which may highlight discrepancies between paper plans and real capabilities.
- o Audit protocols should be developed to ensure proper pre-audit preparation. Regulations should be integrated into protocols and they should direct auditors' examination/inspections and require written comments or fill in the blanks, yes/no, answers.
- o The audit should end with a de-briefing to clear misinterpretations, gather additional information and provide preliminary audit results to facility personnel, especially the site manager.

PANEL: CONDUCTING THE ENVIRONMENTAL AUDIT - THE SITE VISIT

ARCO'S APPROACH TO CONDUCTING AN ENVIRONMENTAL AUDIT

WILLIAM G. KELLY

Manager, Environmental Services
Atlantic Richfield Company

- o ARCO's corporate policy is to comply with environmental legislation and maintain a corporate environmental protection group. The program works by making line managers responsible for meeting environmental standards.
- o The Environmental Protection Systems Review Program assesses and improves total environmental protection performance through effective management systems. The Review Panel consists of 125 middle management types. Review teams are selected from this group and these teams actually perform the reviews of ARCO's facilities.
- o Pre-review activities prepare the review team for the on-site review. The team has six months notice prior to the on-site visit.
- o Comprehensive on-site reviews take about ten days to two weeks and involve records reviews, assessing who is involved with environmental management, completing checklists developed for specific facility types, orientation meetings, facility personnel interviews, drills, and demonstrations.
- o Facility interviews are confidential and include 5 to 10 percent of all the facility people from the manager down the line; half-hour interviews per employee. Facility people are generally willing to talk candidly.
- o Nightly audit team briefings are conducted at a separate operations center to discuss interviewee comments, on-site observations, and to identify problems and assess opportunities.
- o Prior to departure, the team drafts findings (good and bad) and recommendations and presents them to the facility manager with whom every item is discussed in detail. Upon completing the de-briefing meeting, the facility has 45 days to respond to the findings.
- o Usually the review team will consist of managers whose plant will soon be audited. This encourages reviewers to clean up their facilities since they know they will soon be audited.
- o Attention given the review program by facility top management encourages line managers to actually request reviews of their facilities because recommendations weigh heavily in allocating limited funds.
- o Finally, even though the first review is comprehensive and time consuming, the second audit is always simpler than the first -- all the requisite documentation has been collected and must simply be kept updated.

PANEL: CONDUCTING THE ENVIRONMENTAL AUDIT - THE SITE VISIT

OLIN'S APPROACH TO CONDUCTING AN ENVIRONMENTAL AUDIT

ROBERT W. CUTLER

Manager, Regulatory Audits
Olin Corporation

- o Olin's audit program was developed in the mid-seventies in response to the proliferation of complex regulations, and report submissions (25,000/year).
- o The Audit Department was formed in 1978 at the request of the CEO with top management support which is critical to its success. The audit program reports to the chief internal auditor who reports to the chairman. This insures independence of the EA function from the operations. Olin's audit protocols and methodologies were developed from the experience of financial auditors and cover all applicable regulations, compliance method testing and verification, and facility specific organizational considerations.
- o Compliance auditing activities at Olin involve representatives from product manufacturing, technical (know regulations and assist in assessing their application and implementation), legal (interpreting laws and regulations), and auditing groups. The audit group reviews, observes, and reports independently from the other three groups.
- o The mandate of the Audit Department is to ensure that every Olin operation is conforming to all regulatory requirements. This includes ensuring compliance as well as ensuring the adequacy of compliance systems, procedures, and organizations.
- o The Audit Department consists of 5 full time independent auditors. Every facility is visited once a year covering up to 40 subject areas in each audit.
- o Field work is directed at: documents, regulations and facility variables, and on-site activities. The audit usually only extends to the facility property line. Reporting mechanisms are checked for accuracy. Off-site shipments are checked for handling, identification and conformity to regulations.
- o A major purpose of the audit is to ensure that required information and reports are competently prepared and accurate in content. This includes detailed analyses of methodologies and control systems generating the data which is the basis for a report.
- o The results of Olin's audit program have been very positive to date: communication throughout the corporation that Olin will comply with regulations; assurance that compliance efforts are correct; and a 10% reduction in emission rate over the past 5 years.

PANEL: THE AUDIT REPORT AND FOLLOW-UP

OVERVIEW

F. PAUL PIZZI

Vice President
Pilko & Associates

- o Audits can be a powerful mechanism to establish on-going communications between facilities and upper management. A successful site visit plus report contents, problem-solving and format considerations, and the right skills will result in a successful environmental audit. The report should be reviewed and followed-up to fully realize its benefits as a management tool.
- o To be an effective management tool the audit report should: be a flexible working document; look at environmental programs to verify their effectiveness; identify areas of concern; and present a management action plan for identified action items.
- o The report also should be tailored to your EA program goals, provide recommendations, and be written with action verbs in a positive tone to get a better response. The report can provide a picture of the compliance status, an assessment of risks and liabilities of concern, or somewhere in between.
- o All audit results should be brought to the facility manager's attention prior to inclusion in the actual report to avoid "surprises" in the final report.
- o Recommendations for solving problems must be addressed in the report. They can involve conceptual solutions but only to the extent they draw on auditors' knowledge and experience.
- o Report format should be tailored to meet EA program goals with details and descriptions of operations, problems, and solutions or at least brief statements of problems and solutions. The format may be partially dictated by report distribution; which management level will use the reports and for what?
- o Critical skills necessary for report writers include operating background such as hands-on manufacturing industrial background, diverse experience such as ability to ask the right questions and get accurate answers, auditing experience, verbal communication skills, and written communication skills (e.g., ability to report factually and to "sell" recommendations).
- o Report review and follow-up procedures are critical. Get the report reviewed to make sure it is factually correct. Follow-up the results in management's addressing identified problems.

- o A set procedure can be used for follow-up activities and involves:
 - Establishing an action plan and schedule;
 - Assigning follow-up responsibilities to individual staff;
 - Implementing environmental status reports which detail facilities' environmental compliance status and document budget requirements.
- o An annual audit program summary addressed to executive management should detail audit program accomplishments.
- o Report distribution should be restricted to a need to know basis, but must include those who can implement recommendations in the action plan to make it an effective management tool.

PANEL: THE AUDIT REPORT AND FOLLOW-UP

ENVIRONMENTAL AND ENERGY AUDITS OF AIR FORCE
GOVERNMENT OWNED-CONTRACTOR OPERATED
INSTALLATIONS

BARRY HATFIELD

Chief, Facilities Management Division
U.S. Air Force/Aeronautical
Systems Division

- o The Air force audit program is directed at a myriad of Government Owned-Contractor Operated (GOCO) facilities located across the country, engaged in manufacturing a variety of defense related equipment. We had 19 GOCO facilities on 15 bases audited in one year.
- o The purpose of the audit primarily was to comply with in-house regulations. A standing regulation exists which calls for assessment of compliance with all applicable regulations. The audits were Air Force sponsored.
- o This audit program was unique in that it covered environmental compliance and risks, materials recovery, and energy conservation. A major underlying emphasis was on cost-avoidance because if you can spend money up-front to correct a problem, are saving a larger expenditure down the road.
- o Common facility problems were discovered: compliance problems and hazards; penalty potential; unidentified hazardous waste generating operations; and poor performance despite having passed regulatory agency inspections.
- o The nature of the GOCO facilities allowed problems to be grouped separately: a) regulatory that required contractor action/funding; b) regulatory that required AF action/funding; c) hazard areas that required contractor action/funding; and d) hazard areas at required AF action/funding.
- o The audit was action-oriented. The audit results helped identify who was responsible for addressing each item (e.g., the Air Force or the contractor). The contractor evaluates the audit and the proposal to address uncovered problems, money is secured and the problem is addressed. One of the major end results was an improved relationship with EPA since they were involved in the process and consulted about appropriate actions.
- o The audit results have helped overcome funding obstacles associated with addressing noted problems because audit results act to justify budget requests.
- o Checklists included in each audit report allowed contractors to self-audit and evaluate their operations after the formal audit. Checklists were extremely helpful in fulfilling personnel training needs.

- o It is critical to act upon the results of your audit, failure to do so may invite EPA action. You must work hard to secure funding and establish a milestone plan for correcting problems.
- o The audit program has allowed AF/ASD (Aeronautical Systems Division) to: re-direct budget thrusts; re-direct subsequent audit thrusts; establish a baseline for out-year activity; and provide support for reallocating resources from other mandate areas to environmental needs.
- o In running an audit program you must have a lot of resources and be able to direct them quickly. In this context, never audit a problem that you already know about--use your resources in addressing the problem.

PANEL: THE AUDIT REPORT AND FOLLOW-UP

QUESTION AND ANSWER SESSION

Question - How can Federal facilities benefit from the work and experience done to date to keep from reinventing the EA wheel?

Answer - Ray Kane Weston: Develop generic protocols and checklists for common regulations that would be applicable to operations at many federal facilities.

Doris Sanders, JRB Associates: People in the auditing field can network with each others. Simply talking about common problems and similar solutions can go a long way for sharing information.

Question - If you anticipate that major problems will be discovered through your audit and the funds to fix these problems will nearly be impossible to secure because agencies have missions other than cleaning up the environment, what is wrong with management deciding not to audit?

Answer - Courtney Price, EPA: It is against the law not to address environmental problems and protecting the environment is not just EPA's mission. Ensuring compliance is a joint responsibility held by the facility as well as EPA. It is like fire regulation compliance - its not optional. Additionally, it usually costs less to look for and address a problem early on rather than to wait until the problem surfaces and it gets much worse. EPA has a public obligation to take action where problems exist and are not being addressed.

Robert Cutler, Olin: In undertaking a program like EA, management, whether in the private or public sector, must make a philosophical commitment to do what is necessary to comply with the laws.

Barry Hatfield, USAF/ASD: Securing funds to address problems will be eased through documentation of their existence and severity because, for example, no commander wants bad publicity. But, there should be the realization that the solutions may take time to implement and as some problems are remedied new ones may appear.

Bill Hasselkus, DARCOM: To secure management support for an EA program, tie it to the mission of the facility. For example, present the argument that EPA will react to unaddressed problems by shutting down a facility and preventing the manager from accomplishing his mission.

Charles Alford, USAF/ASD: Today, the largest aerospace facility in the U.S. does not accumulate wastes for more than 90 days, it used to keep wastes on-site for over a year. The audit changed that. We have discovered opportunities for saving money by streamlining environmental management.

Question - At what level in the management/command chain will EPA enforcement action be directed? Facility manager? Commandant? Group Commander?

Answer - Courtney Price, US EPA: The compliance strategy starts at the facility level and escalates up the chain of command/management to the agency headquarters if it is not resolved. Ultimately, unresolved disputes are submitted to OMB for resolution.

Mike Levin, U.S. EPA: This process allows the facility/base commander to make the Agency commander responsible for committing funds to fix the problem.

Francis Mulhern, U.S. EPA: As Region III Federal Facility Coordinator, I am here to assist you in addressing compliance problems. Money can be targeted through the A106 review process. Cooperation, rather than conflict, between the Agency and EPA will assist in problem resolution. If you start an EA program and identify skeletons, are not going to be heavy handed.

Bill Kelly, ARCO: On the industry side we suffer similar problems. However, we commit all environmental managers to the underlying ARCO policy of compliance with environmental regulations. The "old bull of the woods manager" who does not follow corporate policies is no longer with ARCO.

Ralph Rhodes, Allied: One truism is you are better off knowing what your problems are than remaining ignorant. EA will make you better off in that it will array your concerns, opportunities, and priorities.

Comment - With respect to getting an EA program established, the presence of middle management (not merely base level or pentagon level people) at conferences such as this would help. Middle management support is crucial.

Comment - The military will respond effectively to problems that are brought to our attention. We will deal with the 5-6 year funding cycle, and we will respond. When we tell EPA that we are going to address our problems, they will be on our side.

Question - When should you not write down the results of an audit and what are the drawbacks of not writing them down?

Answer - Paul Pizzi, Pilko and Associates: You should always write down the audit results. The drawbacks of not writing down the results is that your creditability is destroyed.

Robert Cutler, Olin: Initially our lawyers were concerned about writing things down and we reported only in outline form. A problem with this approach was that as time passed, the meaning of the outline was forgotten and the value of the audit report was reduced. Certain serious problems will get acted upon immediately while others will only be noted in the audit report and not acted on.

PANEL: DISCLOSURE AND CONFIDENTIALITY
OF
ENVIRONMENTAL AUDIT FINDINGS

Moderated by

C. RONALD SMITH

Director

Office of Standards and Regulations, U.S. EPA

- o Douglas Costle, Wald, Harkrader, and Ross; Updike, Kelley, and Spellacy; and Environmental Testing and Certification Laboratory
- o Darby Junkin, Reporter, Newsweek Magazine
- o Barry Breen, Department of the Army
- o Frank B. Friedman, Occidental Petroleum Company

OVERVIEW:
DISCLOSURE AND CONFIDENTIALITY

DOUGLAS COSTLE

Counsel to
Wald, Harkrader, and Ross
and
Updike, Kelley, and Spellacy
and
Chairman of the Executive Committee of the
Environmental Testing and Certification Laboratory
Edison, New Jersey

- o For centuries we have been cognizant of the obvious acute hazards of chemicals. Recently, however, there has been a proliferation of diverse chemicals and we are now aware of chemical hazards in parts per million/billion concentrations.
- o Our insufficient knowledge of the health effects of small concentrations of chemicals requires us to set standards based on imperfect data or epidemiological information.
- o EPA is in a risk management mode to protect public health. Cost effectiveness principles are part of the equation used to address these hazards but, we also have tough laws controlling toxic materials. EA is a tool for risk management, ensuring that adequate information exists to address known and unknown hazards.
- o EA has been as useful as the financial audit in the private sector because it: assists in achieving and maintaining compliance with environmental regulations; prepares companies to anticipate, avoid, and manage crises and to respond to enforcement actions; helps protect responsible corporate officers against civil and criminal liabilities; meet Securities and Exchange Commission requirements; assists in insurance and financial planning (e.g., mergers, spin-offs, acquisitions, etc.); assists in personnel training, and enhances management/employee and corporation/community relations.
- o Similar and even greater benefits can be realized by Federal agencies since they are more open to public scrutiny and Congressional oversight. Federal facilities must do business in public and be held publicly accountable because the claim of national security under FOIA will rarely apply. But, public sector facilities as opposed to private-sector facilities do not have competitive business concerns either.

- o Legal defenses against unwanted disclosure of EA-generated information include: a) the attorney-client privilege; b) The work product privilege; and c) the self-evaluations privilege. I've recently met with corporate executives whose stock has dropped more than 30% as a result of press disclosures of hazardous wastes problems. There is nothing inherently privileged about the facts in the audit. The audit only organizes facts.
- o The issue of confidentiality typically is greatly reduced as EA programs mature and as the importance of dissemination of EA information throughout the company is realized. You audit because you intend to correct the problem based on a voluntary compliance ethic.
- o We, as a nation, are approaching the point where a reasonable manager would assume he's creating risks and courts will impose a legal obligation to discover them.
- o Federal facilities have some distinguishing concerns: securing funds to address EA discovered problems; the body of law governing whether the government can be sued by the government or private parties; being "tried" by public opinion; and dealing with the activities of contractors operating Federal facilities. However, the bottom line is that compliance is required and EA is a valuable risk management tool. Additionally, you take oath's of office to uphold the laws of the U.S.
- o The 1984 edition of Litigation Under the Freedom of Information Act and Privacy Act, 9th edition, edited by Allen Adler and Morton Halpern is a very good summary of FOIA written in lay language and is recommended reading.
- o The Freedom of Information Act (FOIA) should be read and understood by the Federal facility manager. Few things in the Act prevent discovery of EA derived information, especially for evidence pertaining to environmental violations. Generally, FOIA is a "release" statute allowing access to public agency information unless specifically exempted. The underlying theory is that in a democracy a vigilant public is the best protection against government abuse. Exemptions within FOIA include information pertaining to: national security; personnel files and rules; specific exemptions under environmental statutes; trade secrets; agency memorandum including attorney work-product exemption, attorney-client exemption, and executive privilege. In general, the public's interest is given much weight when balanced against your perceived need for confidentiality.
- o The benefits of EA outweigh its disadvantages. The courts say you have an obligation to find out and address your problems. Manage your problems before they manage you. They will be cheaper and easier to address now because you may be liable in negligence later.

DISCLOSURE AND CONFIDENTIALITY AND THE PRESS

DARBY JUNKIN

Reporter, Newsweek Magazine

- o There is a common misperception that the press is a surrogate enforcer of EPA laws -- that if the press finds an environmental problem at a Federal facility a four-inch headline will read, "Government Refuses to Comply with EPA Regulations." But the media can work a very positive effect and managers can work with the media.
- o It is the public's business that a reporter finds out how you conduct government business since you represent the public and use or misuse public monies.
- o A tenet that seems to hold true is the more you down play a "little" problem the more interested the press will be because it becomes a "who done it job." The press loves to dig for the answers and uncovered results make great print.
- o The goal of the media in informing the public is to get action and results. Jawing about a problem may sell papers, but getting the problem solved will make big news also.
- o If you have committed a crime somebody will find out about it. Reluctance to talk to the press and claims of confidentiality will spur the press on and it is the person with something to hide who is really concerned with confidentiality.
- o My advice relating to confidentiality concerns is to be open about it and discuss resolution approaches even though this may not be easy to do. Convince the press that you are acting responsibly and the press will act responsibly. Tell the public that you are no longer using their tax dollars to pollute and create pollution health risks; you should use our tax dollars to keep us safe.
- o Another piece of advice is to practice for interviews to effectively and quickly state both that a problem exists and what you are doing to correct it so it fits into a 20-second time spot.

DISCLOSURE AND CONFIDENTIALITY:
OBLIGATIONS AND OPPORTUNITIES

BARRY BREEN

Assistant to the General Counsel
Department of the Army

- o There are three pathways through which disclosure may be required if information is requested:
 - Litigation is one context where disclosure of EA information can be required. Disclosure can be resisted and somewhat prevented through: attorney-client privilege; attorney work-product; and the privilege of self-evaluation. No case law to date has applied these principles to EA. They are based on public policy and to the extent we want to foster non-disclosure, we need to make sure EA is in the public's interest;
 - FOIA information requests may be withheld through classifying documents. But practically speaking, classifying an EA document for national security reasons is very unlikely to prevent disclosure. The deliberative process privilege may apply to interagency memorandum to withhold information. Facts must be released, but opinions can be withheld, therefore, you should segregate facts from opinions in your audit reports. Privileged interagency deliberations enable freer exchange of ideas.
 - Congressional information requests can only be denied through Presidential decision. If Congress wants EA generated information they will get it.
- o There are certain instances where you must disclose information once you have knowledge of a situation even if you are not directly asked:
 - Under section 103c of CERCLA, the responsible person must notify the National Response Center of significant releases; Section 111G requires notification of potentially injured parties; Common law also includes a duty to warn potentially injured parties; Federal facilities are subject to state disclosure laws, though there are certain exemptions in the Federal Tort Claims Act. Finally, as a public servant you should notify anybody you're activities may harm.
- o EA can be used to assess not only your potential impacts but also those problems that are being inflicted upon your property by a lessee, neighbor, midnight dumper, etc. This affirmative use of EA may assist your bring enforcement actions against others.

DISCLOSURE AND CONFIDENTIALITY:
CORPORATE PERSPECTIVE

FRANK B. FRIEDMAN

Vice President, Health, Environment and Safety
Occidental Petroleum Corporation

- o I think it is interesting that many of us from industry are now talking to the Federal government about the importance of environmental compliance.
- o Environmental managers have a need to know what their potential new problems are. So you implement an EA program to discover problems and a follow-up program to address noted problems and deal with the associated legal issues separately. Environmental management is a policy decision.
- o EA information is probably discoverable, especially that which is required to be reported to EPA (e.g., DMR's, excursions, excursions, spills, etc.).
- o As a responsible corporate officer you are liable for the activities of your facility. Recent legal trends may in fact hold corporations liable for not having an EA program. So despite the confidentiality concerns you must discover and address problems -- the discourse on confidentiality may be irrelevant.
- o Only when you are in litigation can the attorney-client or attorney work-product privilege apply. The Self-Evaluation Privilege is limited, especially where there is a potential danger to the public and TSCA applies.
- o Agencies have to worry about public and Congressional oversight. In light of public trust considerations you are committed to addressing uncovered problems and now is the time.
- o In industry and in government one must take the view that we will develop and adhere to a strong compliance program because we are in business for the long-run.
- o Regardless of whether information is discoverable, you must operate your environmental management program from the perspective that what you do not know will hurt you. The issue of confidentiality is a red herring in terms of management and corporate philosophy and in terms of cost-effectiveness of environmental management.

DISCLOSURE AND CONFIDENTIALITY

QUESTION AND ANSWER SESSION

Question - From the EPA enforcement side, is EPA willing to live with the Federal agency 5-year budget cycle in resolving environmental problems if items are properly documented and identified and corrective action is being taken?

Answer - Courtney Price, EPA: As in the private sector, there are situations where EPA enters into agreements, consent decrees, etc. where people are put on compliance schedules. The Agency is not able to say at this time that we can wait 5-6 years for compliance. But, there are precedents where regulated entities have entered into agreements with the government and some sort of compliance schedule is given.

Question - How do I deal with the press when the last time that I was open and cooperative but did not have necessary scientific certainty to resolve the problem I got "zapped" publicly by the press?

Answer - Darby Junkin, Newsweek: Granted, the people who are affected by the situation are not going to be happy. However, the final analysis is not whether you get good press, but whether you have done your public trust duty.

Douglas Costle, WH&R: There is no escaping the press. Also, the press is generally not an expert on these issues. They respond to your apparent intentions or body language as much as the facts. The rule that I followed as the Administrator of EPA when dealing with controversial issues was to be honest and sincere about what is and is not known. The reporters that are the good ones, those that people pay most attention to, will be conscientious about what they write.

Question - Once I document my problems in an EA report what are my reporting obligations?

Answer - Douglas Costle, WH&R: There are a variety of obligations, especially with respect to spills. Reporting spills exculpates you of liability because you are fulfilling an obligation under CERCLA. But otherwise act on the report. Disseminate it throughout the agency. Segregate opinion from fact and release it and explain what you did, why you did it, and what you intend to do about it.

Darby Junkin, Newsweek: If you have a problem, immediately act on it. Tell the press what you think the problem is and what you are doing about it. If you delay, your credibility decreases.

Frank Friedman, Occidental: Identify the solution along with the problem for management to respond to. Work with the press and tell them what you know and what you are doing.

Question - What do I do when preliminary investigations reveal high levels of contaminants but not high enough to pose a significant health hazard? Do I report this information?

Answer - Frank Friedman, Occidental: It is a question of judgement. Do some confirmation studies. If further studies suggest that the problem exists, act on it and report it. Do not hesitate in reporting it to acknowledge uncertainty in the possible problem or solution.

Douglas Costle, WH&R: It is a notion of due diligence; do confirmation studies immediately.

Comment - Peter Daley, DOD: Get the facts out from the start and tell the regulators what you know and what you are doing about the situation. Mobilize resources to address the issue, especially where there is a potential health risk.

PANEL: ENVIRONMENTAL AUDITING AT FEDERAL FACILITIES

Moderated by

LEONARD FLECKENSTEIN

Environmental Auditing Project Manager
Regulatory Reform Staff
U.S. EPA

- o Peter S. Daley, Department of Defense
- o Thomas G. Frangos, Department of Energy
- o Donald Mantay, National Institutes of Health
- o William Hasselkus, Department of the Army
- o Paul Schmierbach, Tennessee Valley Authority

ENVIRONMENTAL AUDITING
WITHIN THE DEPARTMENT OF DEFENSE

PETER S. DALEY

Director, Environmental Policy
Department of Defense

- o The key question is: "How do I convince my boss to fund/support environmental programs in general and environmental auditing in particular?" Tell your commander that "compliance is the law and you are going to get caught if you do not comply; if not by EPA, by somebody higher up, the press, the public, or Congress." Tell him that "getting caught has had these consequences on others and could have the same or worse for you." Make your Commander realize that environmental compliance is part of the agency's overall mission. Failure to comply will hinder your ability to achieve the agency's mission.
- o The EA project headed by Barry Hatfield and Charles Alford at AF/ASD is a dramatic example of how the right people at the right time can turn around an environmental management program. They have got studies, reports, and a plan of action to follow-up.
- o Good audits will discover previously unknown problems, and once the audit report is done it is public information. So, if you cannot stand the answer do not ask the question. But do not hide things because they will come to light anyway and probably at the worst possible time.
- o Support all the way up and down the line is critical to the successful implementation of an EA program. You cannot implement an EA system without that organizational support, because people have a way of subverting things they do not want to succeed.
- o The DOD's approach to solving environmental problems has been piecemeal. A piecemeal approach to environmental management is not adequate to replace the comprehensive coverage supplied by an EA, especially in light of the size of DOD and its installations and of the expanded scope of regulations. Until five years ago you could run an environmental program without a comprehensive audit system. But now you need EA, i.e., a thorough and detailed accounting system to keep track of all the requirements and how you are meeting them.
- o A third party EA is critical to getting a real assessment of your performance and is more effective than a self-audit. You cannot audit yourself and get the unbiased, unshaded truth.

- o We live at the margin and must compete for support. Competing for and securing funds for environmental programs will be far easier if requests are accompanied by documentation developed through an EA program. Additionally, how much money you get in the budget depends on how good a job we do in environmental protection. Satisfying environmental requirements helped determine funding availability for: the MX missile, Federal facility waste site clean-up, and the Clinch River Breeder Reactor.
- o Employee morale and community relations are affected by your facilities' environmental performance. In order to maintain good community relations and worker morale, and to attract quality people to your organization, you must maintain a good image. In the long run, this will positively affect your productivity and assist in better achieving your mission.

ENVIRONMENTAL AUDITING
AT THE
DEPARTMENT OF THE ARMY

WILLIAM HASSELKUS

Chief, Environmental Quality Division
Department of the Army

- o The Defense and Readiness Command (DARCOM) is the Army's materiel support, or industrial base, with ammunition plants, depots, arsenals and test grounds. DARCOM makes the environmental policy for the command and manages the budget. We do not yet have an EA program. One is under development.
- o One of the reasons for going after an EA program is the lack of a comprehensive, coordinated picture of environmental activities, problems, and resource needs. Currently installations are inspected by various entities (e.g., IG, GAO, etc.) for various special purposes. Each one giving us only a part of the whole picture.
- o DARCOM has a legacy of activity beginning before World War II that has caused on and off-installation environmental contamination problems. Confirmed groundwater contamination is at 38 of 67 installations. These problems have to be discovered, assessed, and remediated. The emphasis is now on discovery and assessment, especially of hazardous wastes and materials: DARCOM is working with the EPA to address these problems.
- o Dealing with pollution problems is not cheap. Forty-one percent of our construction dollars have been going for pollution abatement.
- o Why have EA? In order to deal a subset of Murphy's Law that says "materials will be disposed in such a way as to cause maximum environmental harm, get you in maximum regulatory trouble, peak congressional interest, and get you roasted in the press."
- o DARCOM will develop a systematic approach for an EA program. We intend to first assess where possible problems are. The EA process will: identify the environmental laws and regulations specific to a given installation, review records and data, develop site visit plans, execute the site visits, collect data, evaluate the data, and prepare a report. Then we will prioritize installations for follow-up activity.

ENVIRONMENTAL AUDITING
AT THE
DEPARTMENT OF ENERGY

THOMAS G. FRANGOS

Acting Director, Public Safety Division
U.S. Department of Energy

- o DOE's structure (for R&D, nuclear defense production and manufacturing support, power marketing authorities, and the Strategic Petroleum Reserve) is highly decentralized. Most facilities are government owned-contractor operated (GOCO), with both contractor and Federal employees involved.
- o DOE has an EA or "appraisal" program. The appraisal program is one component of the environmental protection, industrial hygiene, and occupational safety and health (ES&H) programs, which employ about 600 people. There are also other DOE vehicles for providing assurance.
- o DOE's highly decentralized structure creates some problems with respect to its environmental assurance program, since environmental performance is a line management responsibility.
- o An independent assurance program is maintained, removed from the mission responsibilities, and ES&H appraisals are done in a tiered approach. Headquarters appraise Field Offices; Field Offices appraise contractors and site organizations; GOCO organizations must appraise themselves.
- o DOE is in a unique position in that a significant degree of self-regulation must be adhered to in dealing with environmental, health (OSHA), and radioactive material (NRC) regulations. "Comparable" procedures must be developed as a substitute to regulation. The ES&H program helps assure program efficacy.
- o When the appraisals began with the Manhattan project and AEC, they were aimed at radiation protection. Appraisals now integrate 14 functional areas into comprehensive reviews rather than single appraisals. A team of 20-25 people do an appraisal of a facility. Appraisals are aimed at two areas: in-place management systems adequacy, and performance at the plant level with respect to technical and regulatory criteria.
- o All appraisals include:
 - pre-appraisal preparation: scheduling, pre-appraisal meeting at the Field Office, agenda, subject matter, homework.
 - draft appraisal reports produced and provided to the facility manager for review prior to the departure of the team.

- follow-up procedures designating action plans by the Field Office and reporting to Headquarters.
- o Ensure that you have individuals specifically trained in auditing on your staff. There are techniques and methods that are critical that your auditor should be trained in.
- o Do not expect your EA program to replace your environmental management program or to find all past existing, and potential problems. Target your audit to make it more effective.
- o Through Argonne National Laboratory we are looking at ways to draw on industry EA experience and improve our audits, especially to make them more compliance oriented. Argonne has already prepared a checklist for use in doing environmental audits.
- o Unique regulatory reform opportunities exist with Federal facilities, especially with respect to setting up a pilot EA/multi-media inspection program.

ENVIRONMENTAL AUDITING
AT THE
NATIONAL INSTITUTES OF HEALTH

DONALD MANTAY

Chief, Environmental Protection Branch
National Institutes of Health

- o NIH does not yet have a working EA program, but is developing one.
- o NIH is an agency within the US Public Health Service and is involved in biomedical research, with 15,000 employees at facilities in nine states. The NIH experience in developing an audit program may be particularly applicable to smaller agencies.
- o NIH has a reputation for scientific excellence, and is located in a county where people are very interested in environmental protection. This reputation and interest enhance our ability to have a strong environmental program and get management's attention.
- o Our EA system objective is to help our program, research, management and operations people understand our environmental obligations and ensure compliance with regulations. We look at EA as a quality assurance tool that is part of an overall environmental management program. EA will be used as a basis of reference for our internal environmental regulatory program and will provide a tool for determining how well the program is performing.
- o We initiated the EA program using a contractor because of a need to get the job done within a certain time frame and a lack of in-house personnel.
- o We selected a contractor having a team with staff expertise, depth, continuity, and a demonstrated track record in EA.
- o Development of our EA program involved: first, understanding NIH operations through file information and assessing the regulatory environment that applies to those operations; second, site interviews to confirm preliminary findings; and third, developing a guidance protocol detailing how the EA should be done.
- o In the long run the EA program should be a valuable tool for educating people about environmental concerns and their obligations and how we as agencies interact with our environment.

ENVIRONMENTAL AUDITING
AT THE
TENNESSEE VALLEY AUTHORITY

M. PAUL SCHMIERBACH

Chief, Environmental Compliance Branch
Tennessee Valley Authority

- o TVA is a Federal agency that acts much as a private corporation. Our activities include coal gassification, chemical operations and development, power generation, and natural resources/recreation area management.
- o TVA is an example of the Department of Justice's resolve and ability to sue a Federal agency. As a result of this action, TVA entered into a consent decree that caused us to spend \$800 million for air pollution equipment for our coal-fired generation equipment.
- o Our EA program is only 3 years old. While all the bugs have yet to be worked out, we feel it has been a success in evaluating environmental compliance and identifying deficiencies at TVA facilities.
- o The EA program looks both at multi-media activities at the facility level and at single media activities across the agency. Corporate level people comprise most of the EA teams, providing a level of objectivity.
- o Environmental data, permit conditions, permit renewal dates, and related information for each facility are computerized to facilitate audits.
- o Continuity, uniformity, and technical quality are emphasized in EA reports, which are used internally as a management tool. Annual reports are prepared on findings and responses and go to the Board of Directors.
- o Our EA program covers a variety of items including legislation, regulations, TVA policy, organizational procedures, permits, documents, commitment to regulations, etc. Two types of audits are conducted: (1) facility audits which review compliance status, management activities, and quality assurance programs; and (2) non-routine audits which address specific concerns or new regulatory requirements.
- o EA findings are designated based on their severity and need for corrective actions and are also computerized for tracking purposes.
- o Our audits also look for situations where the economic viability and technical responses to environmental management needs may be enhanced.
- o As a result of our EA program we are better informed about our environmental compliance status, and our facility managers are more sensitive to environmental compliance problems.

PANEL: ENVIRONMENTAL AUDITING AT FEDERAL FACILITIES

QUESTION AND ANSWER SESSION

Question - How do you deal with unregulated pollutants or regulations that are coming down the line?

Answer - William Hasselkus, DARCOM: We read the Federal Register, environmental newsletters, and maintain contact with EPA people in the know.

Donald Mantay, NIH: Agreed. We also use best practices for unregulated areas which prepares us to react quickly to new regulatory developments in that area.

Question - How do you deal with contract operations at Government-Owned-Contractor-Operated facilities?

Answer - Tom Wash, Army/AMC Command: We have included clauses in contracts that adjust the award fee based on environmental performance. Adding a fee to the contract if the contractor accomplishes a certain level of environmental performance has also been a valuable tool.

Question - Saying to my boss that "you must comply because it is the law" does not work anymore. There are competing laws. Additionally our primary concern is not the federal EPA, but rather the state.

Answer - Peter Daley, DOD: The law is not the only reason for environmental compliance. In addition to EPA inspections, there are environmental action groups, reporters, and the general public -- all of whom are watching your environmental performance.

Tom Frangos, DOE: We are seeing more three party agreements between ourselves, EPA, and the State. Despite our good efforts and intentions, sometimes enforcement action is the only way the system gets the message.

Donald Mantay, NIH: You can respond to outside forces, other than regulatory agencies, through a couple of avenues. First, by looking ahead towards sensitive projects so you get the jump on the regulators and other entities when mandatory controls are imposed. You also show management how forward-looking rather than reactive your program is. Second, our EA protocols are heavily weighted to State regulations.

Question - How can we get smart quick and make the climb up the EA learning curve less painful?

Answer - Peter Daley, DOD: Convince the line managers that EA is important. Get them to learn from other experienced line managers who have EA programs. Talk to people who have successful EA programs.

Paul Schmierbach, TVA: Line managers are important but you also have to have full support from the top, which is where our program began.

Tom Frangos, US DOE: Agreed. The line managers may be reluctant during the learning process but will probably come around. Still, if you lack top management commitment, an EA program is not going to go very far.

ENVIRONMENTAL AUDIT PLANNING EXERCISE REPORTS

This section provides the results of the Environmental Audit Planning Session. This session was held to allow conferees to: (1) assess the applicability of EA to their organizations; and (2) begin to think about the mechanics of developing and implementing an EA program within their organization. Conferees broke into seven groups to facilitate better discussion and analysis, with each group headed by an individual experienced in EA. Each group also had a reporter assigned to record the principal discussions points. What follows are the summaries of the reporter's notes as they were presented to the full session.

Group 1

Reported by
MALCOLM WEISS
Regulatory Reform Staff
U.S. EPA

- o Management support is critical to the implementation and success of an EA program. Management support should include setting priorities for long and short-term planning.
- o Facility managers may have to get out and market EA programs to superiors or top managers. One way is to document important benefits of EA including: cost avoidance, worker health and safety, and community relations.
- o Managers should not rely on regulatory inspections to judge performance due to constrained Federal/State agency resources. EA programs should instead be relied upon to produce information which can be used in positive ways.
- o Where funds are available but staff positions and/or staff expertise are not, outside consultants can be relied on to implement EA programs.
- o There is a perceived need for an EA checklist or cookbook such as NEIC's Multi-Media Compliance Audit Inspection Procedures manual to avoid reinventing of the wheel".
- o The EA program must be integrated into the management structure (e.g., coordinating up and down the lines, defining lines of authority, who needs to be brought into the process).

- o Those in Federal government management positions may not understand the best ways to manage projects and budgets. Management training may alleviate this problem.
- o The EA program should be flexible to allow for quick response to regulatory changes, and should oversee facilities' compliance assurance programs.
- o Some concern was expressed that Federal agencies who act in good faith to address problems should get the understanding of and easier treatment from EPA.

Group 2

Reported by
THOMAS BARTHOLOMEW
 National Institutes of Health

- o Group 2 agreed that EA is good and needs to be done.
- o There is a real lack of knowledge among managers and operating personnel about environmental programs and the need for compliance. So determining environmental compliance status and training staff are popular objectives for EA programs.
- o Prior to developing an EA program, you need to scope out resource needs and potential problems. EPA could help by developing a model EA program, perhaps with its own facilities.
- o A problem with EA implementation in the government and military is the "short-term" outlook held by top managers. Since they are not going to be there for long they are less inclined to commit to an EA program which generates long-term benefits. Additionally, the budget cycle and administration turn-over every 4 years may cause managers to resist EA program development. Even with management's support there may not be sufficient personnel resources and funding support.
- o Suggestions for overcoming problems include: emphasize positive career development aspects of EA programs, identify and deal with disadvantages up-front; sell the whole organization on the program, not just the top; institutionalize the EA program; secure funds from other operating programs to get the EA program started; attach the EA program to another program (health, safety, energy) to get it started; justify the EA program by tying it to the agency's mission.
- o More regulatory agency enforcement would enhance EA program prospects.

Group 3

Reported by
LEWIS ANDREWS
NASA

- o Current environmental management programs are not adequate and could benefit from an EA component.
- o Popular EA types and scopes would include: baseline, compliance, future compliance, and hazard management audits. The most critical need now is for environmental baseline audits.
- o Top management is a major hurdle to the establishment of an EA program, but management approval can be more easily gotten with outside help (e.g., IG, EPA, State) to demonstrate need. Mid-level managers must communicate their EA program needs to top managers.
- o Top management support will be more easily gotten if they are personally named in compliance and enforcement orders, and if their own performance standards are tied to environmental performance of their facility.

Group 4

Reported by
FRANCIS MULHERN
U.S. EPA Region III

- o The group agreed that EA should be a part of every environmental management programs. It is already part of many environmental management programs.
- o Popular audit types would include: compliance, hazard management, special purpose, cost identification, risk assessment, facility profile, and future operations. The emphasis should be placed on consolidation of audit areas, rather than single media audits.
- o There was some discussion of who in upper management would approve an EA program. EA approval must come from the Department level in Washington, DC.
- o "Audit" has a negative connotation and should not be used when selling the program to upper management.
- o Advantages of an EA program from management's perspective include saving money, keeping EPA off your back, detailing previously unknown or unquantified problems, and avoiding bad press. A disadvantage is potential difficulty in securing funds to address noted problems.

Group 5

Reported by
DONALD KNAPP
Bureau of Indian Affairs

- o Existing environmental management programs are adequate given the limited resources available. But environmental management programs are often unstructured, and we all felt that there is a need for an EA program.
- o Concerns with implementing an EA program include: pushing paper rather than dealing with problems; who should implement the program (agency or installation); and lack of a specific person to take the lead to get the program going.
- o Popular EA program goals would include: risk assessment, compliance, involvement of line managers and technical people.
- o Problems in securing management approval include: relating EA to the agency's mission and arguing the need for a base line audit.
- o Possible solutions include: make EA program money a dedicated line item; have EPA mandate EA through regulations; get a Presidential and OMB supporting statement; and put on a training program for line managers.

Group 6

Reported By
CARL KNEELING
U.S. Navy

- o We all agreed an EA program is essential.
- o Popular goals of group members would include assuring compliance and maintenance of a comprehensive management system. An EA program would be useful in building an overall environmental management system or verifying that it is functioning correctly.
- o Securing management approval is difficult given EPA's lack of enforcement and the low visibility of some Federal agencies.
- o EPA -- Bill Ruckelshaus -- should put pressure on other agency heads to establish EA programs.

Group 7

Reported by
BARRY HATFIELD
U.S. Air Force/ASD

- o Most group members had EA programs already in place or in the making. Those who did not have an EA program felt that one was needed. Most group members' EA programs emphasized compliance, although some merely identified problems and others were more thorough.
- o We saw obstacles to EA programs as including: organization, agency mission, and the bureaucracy. Confidentiality concerns should not be an issue for EA in Federal agencies.
- o While funding should not be a real problem in the long run, the timing of budget requests is a major problem.
- o Generally, skills for an EA program already exist within the organization but require realignment and redirection.
- o To promote EA, train upper level people on EA: what it is, and what its benefits are. Show them how EA saves money and reduces publicity.
- o EPA and DOD should sign a general conceptual agreement that EA is needed. This would ensure top management support within DOD.

PERSPECTIVES ON ENVIRONMENTAL AUDITING: CURRENT STATUS AND FUTURE DIRECTIONS

Moderated by

Allen Hirsch
Director, Office of Federal Activities
U.S. EPA

- o Robert Arnott, Colorado Department of Health
- o Don Silva, New Mexico State Legislature
- o Robert W. Golten, National Wildlife Federation
- o Robert Cutler, Olin Corporation

THE OFFICE OF FEDERAL ACTIVITIES AND ENVIRONMENTAL AUDITING

ALLEN HIRSCH

Director, Office of Federal Activities
U.S. EPA

- o OFA is charged with working with other Federal agencies to minimize the environmental impact of governmental activities and managing Executive Order 12088 which governs Federal facility compliance with environmental standards and requirements.
- o EPA has not in the past done a good job in providing leadership to Federal pollution control efforts.
- o This situation will be changing. More EPA attention will be focused on control of pollution at Federal facilities. The reasons why include: evidence of serious pollution problems; the government should set an example for others; press attention; congressional committee attention; and public concern.
- o OFA objectives include strengthening of: compliance information base; technical assistance and communications; efforts to achieve compliance through whatever vehicles are necessary.
- o EA will assist in meeting these objectives, especially in strengthening the information base.
- o In the next year OFA will: more actively consult with you; inspect your facilities more often; "bug you" and take enforcement action as necessary. We will also heighten Federal agency awareness about EA objectives; push for EA at national level; and cooperate with Federal agency efforts to establish EA systems.

ENVIRONMENTAL AUDITING WITHIN COLORADO'S COMPLIANCE PROGRAM

ROBERT ARNOTT

Assistant Director
Colorado Department of Health

- o EA parameters should include internal management and preventative maintenance, compliance measurement, permit tracking, and technical support. It is especially appropriate to make compliance programs more cohesive and reduce the burdens on the facility from single media inspections.
- o From the State perspective EA will assist in reducing multiple inspections, providing more coordinated compliance assistance, and improve environmental performance. It will allow the regulatory agency to better focus its resources on facilities rather than media within facilities. Compliance determinations will also be easier if a facility has an EA program.
- o Organizational considerations are an impediment to the adoption of EA programs on the State/local levels. State/local organizations are generally organized by media rather than common functions (e.g., permits).
- o I think EA has grossly different applicability to a smaller facility than to a larger facility.
- o Colorado has pulled its media programs together more cohesively. The State currently uses an integrated task force approach to some problems (e.g., Lowry landfill, groundwater, etc.). A joint review process is also used to focus on environmental issues.
- o Colorado deals with Federal facilities through an "umbrella" approach, integrating activities of media divisions within the regulatory agency. A Memorandum of Understanding recently signed with DOD provides a cohesive approach with respect to compliance and permitting at DOD facilities in Colorado.
- o The future of EA is a function of federal EPA support/assistance. To formalize EA on the state level, much more technical assistance will be necessary. Promotion through cooperative efforts with other entities (e.g., National Governors Association) will also help.
- o The EA concept is a good one, and it would serve to ease the public's mind about compliance over the long term.

NEW MEXICO'S ENVIRONMENTAL AUDIT LEGISLATION

DON SILVA

State Legislator
New Mexico

- o New Mexico's Environmental Compliance Act was at first not supported by industry, the governor, nor the public. They all thought that it would be used to the others' advantage and to their own detriment.
- o The legislative intent behind the Environmental Compliance Act of 1983 was to improve industry compliance, implement a systematic procedure for compliance, and enhance communication between industry and regulatory agencies.
- o EA is defined in the Act as "a systematic assessment, analysis, and evaluation by a regulated entity of its compliance with environmental laws and regulations administered by the Board and the Division." Regulated entity includes private and public regulated facilities.
- o The Act directs the State agency, if it should adopt EA regulations, to consider: protection of public health and welfare; technical practicability and economic reasonableness; protection of corporate proprietary processes; and established procedures for correcting any audit findings of non-compliance.
- o The Act stipulates that regulated entities shall cooperate with the Environmental Improvement Division (EID) in developing EA programs and EA programs shall be certified by EID. Penalties are possible but problems are encouraged to be addressed and incentives are to be developed.
- o New Mexico wants industry to take the initiative in developing EA procedures and programs tailored to each situation. EPA should encourage but not dictate EA. And I commend EPA for not making it a requirement.
- o From the programmatic perspective, EA will be better accepted if directed from the top down in the Federal agencies.
- o New Mexico is considering developing a pilot EA program as well as establishing regulations.

ENVIRONMENTAL AUDITING FROM THE ENVIRONMENTALIST'S PERSPECTIVE

ROBERT W. GOLTEN

Counsel
National Wildlife Federation

- o Environmentalists probably do not know much about the EA concept, but would likely support it as having significant potential and perhaps significant achievements. Enforcement alone cannot be relied upon to ensure environmental performance. Self-auditing within corporate or government facilities can ensure compliance better than reliance on external "police."
- o Some cynics might feel that because of EA programs, EPA might back off of enforcement or compliance assurance responsibilities. So, there is a need to ensure EA program credibility. However, disclosure of EA results would not be productive. The audit reports should be used as an internal management tool to improve performance.
- o To assuage public concern you should interest the community in the audit process, perhaps on an advisory committee. Provide the community with an opportunity to select members of the audit team, participate in the audit, or assess how follow-up actions are implemented. Or you can simply hold periodic public meetings to explain the EA process, talk about what you are doing to implement the process, and how you are following up after the audit results come back.
- o Perhaps EA can be used to ensure that facilities (e.g., highways and dams) that get federal funds operate responsibly and in compliance with applicable environmental regulations or risk losing their Federal funds. I wonder whether the EA concept can be applied to this realm of activities.
- o With EA we have embarked on a new non-confrontational way of dealing with issues. EA is an avenue that can be used to bring people with differing viewpoints together to deal with issues. EA may be useful in harmonizing and reconciling interests rather than fighting it out on the environmental battlefield.

THE ROLE OF ENVIRONMENTAL AUDITING IN THE FUTURE

ROBERT CUTLER

Manager, Regulatory Audits
Olin Corporation

- o I have been asked to be philosophical about EA and the history and future of environmental management and regulation.
- o A major factor in the development of our country is the concept of unlimited natural resources. However, 30 years ago we began to realize that resources were not unlimited.
- o The reaction to the environmental problems which came to a head in the 1960's-1970's may have been too quick and antagonistic.
- o By 1980 we thought we had a mechanism in place to protect the environment. Realizing that this mechanism is not going to work, the EA concept was developed. This concept was linked to a change away from the American philosophy of unlimited resources.
- o As growth continues and natural resources dwindle, we all will have to assume a greater responsibility toward our environment's safe keeping. The responsibility is not just EPA's or the government's, but it is all of ours. EA may be the start of this recognition that American concepts developed over 300 years ago may have to change.
- o As the EA concept matures, it will probably become more standardized, institutionalized and fundamental.

PERSPECTIVES ON ENVIRONMENTAL AUDITING:
CURRENT STATUS AND FUTURE DIRECTIONS

QUESTION AND ANSWER SESSION

- Question - (Directed to Donald Silva) What would be the Federal facility's incentive to participate in New Mexico's EA program?
- Answer - Donald Silva, New Mexico: Perhaps cost reduction of waste treatment due to better monitoring or expedited permitting or better community relations. Lets work together to develop incentives.
- Question - (Directed to Donald Silva) Has New Mexico promulgated regulations yet?
- Answer - Donald Silva, NM: Not yet. We have asked the Environmental Improvement Board (EIB) to develop regulations and we are soliciting industry input. The likely result will be minimum EA program criteria. No deadlines for EA programs have been set.
- Question - (Directed to Robert Golten) As many environmentalists have other full-time jobs, their participation in EA would be limited. Would full or part-time environmentalists be involved?
- Answer - Robert Golten, NWF: Perhaps neither. Perhaps use representatives from academia who are specialists in some auditing area. Environmentalists by and large could not committ the resources needed to get involved. Environmentalists should pay more attention to using resources within educational institutions.
- Comment - Donald Silva, NM: DOE's New Mexico Waste Insolation Pilot Project includes a Federally funded "Environmental Evaluation Group" which is basically an independent EA Group.
- Comment - Dick Newton, FAA: In an area with several pollution problems we have developed community advisory councils to talk about and hopefully solve problems. The councils consist of industry, public, and academia. Most everybody wants to avoid legal problems and confrontations. The advisory councils have allowed us to avoid these things.
- Comment - John Sammons, USCG: We used the University to help us deal with a litigation situation involving groundwater. As a result requests were made by the University to allow students to get involved. This gave them practical experience, we learn from their involvement, and it is gratifying to help them out. I would encourage you to try this.
- Question - (Directed to Robert Arnott) Are you willing to accept a Federal facility's 5 to 6 year funding cycle in addressing problems?

- Answer - Robert Arnott, Colorado: There are some situations where solutions to problems can be expedited through State interaction with approval and funding bodies. Some problems cannot wait for 5 years. It depends upon the problem, the solution, and your demonstrated diligence.
- Comment - Gary Fray, DOE WAPA: Direction/regulation by EPA on EA is not appropriate. It is easier to sell management if the concept is not forced down their throat.
- Comment - Donald Silva, NM: An evolving voluntary approach to EA is better because mandatory programs combined with costly regulations will raise the voice of taxpayers and cause a back-lash resulting in their legislation out of existence.

CONFERENCE WRAP-UP

MICHAEL H. LEVIN

Chief, Regulatory Reform Staff
U.S. EPA

- o This wrap-up tries to focus on underlying themes that tie the prior presentations together, rather than on the details of what people said.
- o EPA does not and cannot have all the answers. We're not the experts on facility compliance. You are; and if we can't work together to make the Federal facility program work better, nothing will change.
- o That's why we're here today to explore what EA is and how it works. You don't have to reinvent the wheel. There are many people here who have leapt the same hurdles you'll have to leap to put EA in place. You can learn from their experience, and from the networking that will occur after this conference.
 - For example, EPA has taken and will take the 5-year budget cycle into account where identified problems can't be fixed with current funds, but the 5-year cycle is not divine either. EA can document problems and accelerate the budget cycles. So can compliance plans and administrative orders, where EA has established a problem and the solution.
 - That's why EPA is part of the budget cycle, and why EA can help you use the outside levers in the Executive Order (12088).
- o Compliance assurance systems are horizontal plant-level procedures to assure facilities meet environmental obligations. But EA comes down vertically---it is a way of testing that plant-level compliance procedures are in place and working. If you don't have compliance assurance, there is nothing to audit; just as if you don't have ledgers and cash accounts, there's nothing to audit in a financial sense.
- o You've already got compliance assurance activities; the question is whether to take the next step, not whether to start from scratch.
- o The reasons EPA became interested in EA are still valid. But they've been overtaken by three new ones:
 - EA forces us to rethink our whole notion of standards, "compliance" and enforcement
 - + need to acknowledge that better compliance is reduction in exceedance trends, not meeting each limit every minute

- + need to reward superior performance, not hit good actors harder because we know more about them
- + need to acknowledge that plant operators define compliance now because standards and permits aren't definite; make these determinations rationally, not under-the-table
- + need for better measures of what "compliance" and "superior performance" are, so we can focus on those who don't clean up by themselves, while helping those who do.
- EA can change the whole firm and Federal facility culture environmental responsibilities and their importance. EA means: a commitment to fix what is found; accelerated development of environmental management systems; increased importance of environmental professionals, within and to the organization.
- An EA system, no matter how limited initially, will soon do more than assure compliance with applicable regulations. As numerous speakers and comments noted, it will produce better environmental results than plant-level compliance activities because it forces a focus on:
 - + common problems and common solutions, leading to "considered change";
 - + recent development, plain English translation, and precise definitions of compliance;
 - + integrated compliance assessment, multi-media coverage, and state or common-law requirements going far beyond Federal law;
 - + protocols and checklists that become tools for facilities to start policing themselves better too.
- o In short, EA doesn't restrict top management discretion; it expands discretion, by letting agencies manage for compliance instead of react to crises.
- o Confidentiality concerns should not bar EA. You can try to invoke privileges, but you'll defeat EA's purpose as a management tool if you push them very far. The problems will come out anyway later or, the best defense is to plan to fix what you find.
- o Follow-up. This conference is the start of a process, not a one-shot deal. So we'll be looking at several steps to stay in touch and help you implement EA, including: a follow-up workshop on implementation issues; assistance through the new network of Regional Federal Facilities Coordinators; and pursuit of numerous suggestions made today -- for example, development of more detailed audit checklists, exploration of possible changes in E.O. 12088 procedures to make EA easier for you to implement, and potential pilot projects with DOD and DOE.