

FY 2013

Office of Enforcement and
Compliance Assurance (OECA)

National Program Manager (NPM) Guidance

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EXECUTIVE SUMMARY

A. Program Office

This guidance applies to the Office of Enforcement and Compliance Assurance (OECA), all Environmental Protection Agency (EPA) regional enforcement programs, and states and federally-recognized Indian Tribes (tribes) implementing EPA-approved inspection and enforcement programs¹. OECA designs, develops, implements and oversees national enforcement programs, while the regional offices work with states, tribes, and others to implement these programs. The OECA *National Enforcement Program Managers Guidance* (NPMG) for fiscal year (FY) 2013 describes how EPA should work with state and tribal governments to enforce environmental laws that protect and improve the quality of the Nation's environment and public health.

B. Introduction/ Context

EPA's national enforcement and compliance assurance program is multi-media in scope and breadth. The national program assures compliance with ten distinct federal environmental statutes using a variety of tools, including civil and criminal enforcement, compliance assistance, incentives, and monitoring, as well as other strategies to improve compliance, such as publication of compliance information. OECA implements a total of 28 separate program areas dealing with prevention and control of air pollution, water pollution, hazardous waste, toxic substances, and pesticides. The statutory and regulatory requirements of these programs apply to a diverse universe of regulated entities. EPA works closely with the states and tribes to assure that compliance assurance and enforcement programs achieve the protections of the environmental laws and provide a level playing field for responsible businesses.

The majority of the work in the FY 2013 NPMG is accomplished under Goal 5 - "Enforcing Environmental Laws" in the FY 2011-2015 EPA Strategic Plan.² Goal 5 of the Strategic Plan describes how EPA will address violators and pollution problems through vigorous and targeted civil and criminal enforcement, promote compliance and deter violations by achieving set enforcement goals, including those for national enforcement initiatives with special emphasis on potential environmental justice concerns and those in Indian country.

The FY 2013 NPMG is organized to describe, for each statutory authority, the national enforcement and program office priorities, and other key enforcement actions to achieve EPA's enforcement goals.

C. Program Priorities

OECA's work aligns with and implements the Administrator's priorities in the following ways:

¹ When referring to states and tribes throughout this NPM guidance, OECA is referring to states and tribes authorized to implement federal programs. EPA implements programs in states and Indian country until EPA approves the state or Tribe to implement the inspection and enforcement program.

² The Strategic Plan can be found at <http://www.epa.gov/planandbudget/strategicplan.html>

- **Taking Action on Climate Change:** Enforcement supports the Agency's climate strategy by achieving reductions of global warming pollution in settlements of enforcement actions. OECA will support the integrity of the monitoring and reporting system for global warming pollution by assuring compliance with the greenhouse gases reporting rule.
- **Improving Air Quality:** Enforcement helps improve air quality in communities by targeting large pollution sources, especially in the utility, acid, cement, glass and natural gas exploration and production industries, and taking aggressive action to bring them into compliance, which may include installing controls that will benefit communities and improve emission monitoring. OECA is working closely with the Office of Air and Radiation to reduce toxic air pollution, through protective enforcement, permitting and standards, especially in communities that are disproportionately affected by pollution now. OECA will continue to work with states and tribes to improve monitoring of compliance with air pollution standards and make sure that action is taken against serious violations that affect community air quality.
- **Assuring the Safety of Chemicals:** As the Agency steps up its review of chemical safety and pushes for reform, OECA will work closely with the Office of Chemical Safety and Pollution Prevention to achieve its goals. The enforcement program will take action when we find violations of standards for high-concern chemicals.
- **Cleaning Up Our Communities:** Enforcement ensures that parties responsible for contamination step up to their cleanup responsibilities. By ensuring that the polluter pays whenever possible, OECA's efforts result in more cleanups, which protect more communities from exposure and returns properties to productive use. OECA will also use enforcement to spur cleanup at RCRA corrective action sites where the cleanup progress is stalled. Environmental justice (EJ) is a priority for OECA's waste programs, promoting healthy and environmentally sound conditions for all people. OECA will continue to integrate environmental justice into its Site Remediation Enforcement program by using EJ criteria when enforcing RCRA corrective action requirements to meet RCRA 2020 goals and ensuring that institutional controls are implemented at sites in environmental justice areas of concern.
- **Protecting America's Waters:** OECA's water enforcement program is focusing on the compliance problems that are the biggest threat to the nation's waters, including overflows of raw sewage and uncontrolled storm water discharges, as well as discharges of animal manure from concentrated animal feeding operations. At the same time, OECA will increase oversight of the states and work to define the shared accountability of EPA, states and tribes for clean water, working closely with the Office of Water. OECA will improve transparency, to enlist the public in holding sources and government accountable.
- **Expanding the Conversation on Environmentalism and Working for Environmental Justice:** In all OECA's enforcement work, as described above, OECA protects communities by targeting enforcement in areas where we find serious noncompliance, including in communities that face multiple pollution threats. OECA works with other federal agencies to make sure environmental justice considerations are included in their decision-making

process as they prepare environmental analyses (environmental impact statements or environmental assessments) under the National Environmental Policy Act (NEPA). OECA also will make available more understandable information on facility compliance and government response, so that people have better access to more information about the facilities in their communities, including information they need to take action to improve their own communities.

- Building Strong State and Tribal Partnerships: EPA shares accountability with states and tribes for protecting the environment and public health. With the current economic challenges, it is important that EPA and its partners work efficiently and effectively to do the most we can with the resources we have. At the same time, OECA will strengthen oversight of states that implement federal environmental programs, and support states that take strong enforcement action to protect their citizens by making sure that we hold all states to a comparable standard. Similarly, OECA consults, as appropriate, with tribes when implementing federal environmental programs in Indian country and takes enforcement actions to ensure that same degree of human health and environmental protection in Indian country as elsewhere in the United States.

OECA's overall enforcement goals for FY 2013 are to:

- Aggressively go after pollution problems that make a difference in communities. EPA will use vigorous civil and criminal enforcement that targets the most serious water, air and chemical hazards, as well as advance environmental justice by protecting vulnerable communities.
 - Clean water
 - In follow-up to the Clean Water Act action plan, EPA is revamping enforcement and working with permitting to focus on the biggest pollution problems, such as
 - Getting raw sewage out of the water
 - Cutting pollution from animal waste
 - Reducing polluted storm water discharges
 - Assure clean drinking water for all communities, including in Indian country
 - Clean up great waters that matter to communities, e.g, Chesapeake Bay
 - Clean air
 - Cut toxic air pollution in communities
 - Reduce air pollution from largest sources, including coal-fired power plants, cement, acid and glass sectors
 - Climate and clean energy
 - Assure compliance with Greenhouse Gas Reporting Rule
 - Encourage greenhouse gas emission reductions through settlements
 - Target energy sector compliance with air, water and waste rules
 - Protect people from exposure to hazardous chemicals
 - Prevent releases of hazardous chemicals that threaten public health or the environment
 - Press for prompt cleanup of hazardous sites in communities, ensuring that the polluter pays

- Reform chemical management enforcement and reduce exposure to pesticides, focusing on specific areas aimed to help achieve clean water, clean air, and climate and clean energy, and to protect people from exposure to hazardous chemicals.
- Reset our relationship with States to make sure we are delivering on our joint commitment to a clean and healthy environment.
 - Shared accountability
 - Make joint progress with states and tribes toward clean air and water goals, and protection from exposure to hazardous chemicals
 - Work toward shared focus on protecting vulnerable communities
 - Strengthened oversight
 - Assure strong and effective state enforcement of federal environmental laws
 - Press for consistent enforcement across states and Regions, ensuring fairness and a level playing field
 - Establish new model for shared accountability and strengthened oversight, starting with water
 - Build focus on highest priority problems into grants, enforcement and permitting agreements
 - Define clear expectations for state performance
 - Take federal action where minimum expectations are not met
- Improve transparency
 - Make meaningful facility compliance information available and accessible using 21st century technologies
 - Hold government accountable through public information on state and federal performance
 - Promote better federal environmental decisions and public engagement through NEPA

To help implement these enforcement goals, OECA selects a limited number of National Enforcement Initiatives based upon significant environmental risks and noncompliance patterns. In FY 2010, EPA re-examined the existing initiatives to look for opportunities to clarify goals and measures, more accurately identify universes of sources, and, where necessary, to change the focus of an Initiative. In addition, EPA considered candidates for new National Enforcement Initiatives. After consulting with EPA programs and Regions, states, tribes, and the public, OECA adopted the following National Enforcement Initiatives for 2011 through 2013. More information on each is found in the media sections of this guidance:

- Keeping raw sewage and contaminated stormwater discharges out of our waters
- Cutting animal waste to protect surface and ground waters
- Reducing widespread air pollution from the largest sources, especially the coal-fired utility, cement, glass, and acid sectors
- Cutting toxic air pollution that affects communities' health
- Assuring energy extraction sector compliance with environmental laws

- Reducing pollution from mineral processing operations

Strategies to implement these initiatives are developed by regional and headquarter teams and include goals, measures, and options for innovative approaches.

D. Achieving Compliance for National and Regional Priorities

EPA, states and tribes need to consider how to best use the mix of compliance and enforcement tools (compliance assistance, compliance monitoring, civil and criminal enforcement) to address all the regulated entities contributing to the environmental problem. The strategic use of these tools along with the identification of partners to help implement them will allow for the efficient use of Agency resources and effective approaches to solving large scale issues.

Strategic use of the tools will benefit EPA, states and tribes by: 1) targeting limited compliance monitoring and enforcement resources on the bad actors; 2) building capacity and coordination across partners; and 3) expanding governments' effectiveness and demonstrating governments' commitment. More information on the use of integrated strategies is found in the Guide for Addressing Environmental Problems: Using an Integrated Strategic Approach (March 2007) <http://www.epa.gov/compliance/resources/policies/assistance/index.html>.

Program Reviews

OECA monitors regional, state and tribal implementation activities in a set of annual commitments at mid-year and at the end of a fiscal year based upon regional and state results entered in OECA databases, the Annual Commitment System (ACS), and data collected in the implementation of national enforcement initiatives. In addition, OECA senior managers conduct an annual program review of each regional office. The performance expectations and activities outlined in this guidance are the starting point from which headquarters and the regional offices discuss the management of program activities and the distribution of resources. These discussions result in regional commitments for a specific level of activity and an agreed-upon approach between the Regions and the national program manager for achieving fiscal year performance expectations.

Regional Priorities

EPA Regions may have additional priorities that are specific for a particular environmental situation that may not affect other Regions. Some problems cross regional boundaries and Regions are working together to address them. For example, in response to the President's May 12, 2009, Executive Order 13508—*Chesapeake Bay Protection and Restoration*, Regions 2, 3, 4, and 5 are working with OECA to address nitrogen deposition to the Bay from large industrial air sources of NO_x. The Regions will build on work already begun under the national enforcement initiatives to evaluate the compliance of power plants and other industrial sources in the Chesapeake Bay air shed emitting more than 1000 tons of NO_x per year. Any resulting enforcement actions would seek to achieve significant NO_x reductions through complying actions, as appropriate. In addition, Region 3 will take steps to evaluate the potential impacts on the Bay of ammonia (NH₃) emissions from concentrated animal feeding operations (CAFOs).

E. Cross Cutting Strategies in the FY2011-2015 Strategic Plan

As part of the FY 2011-2015 Strategic Plan, the Agency has identified five cross-cutting fundamental strategies designed to change the way the Agency works and delivers environmental and human health protection. OECA's NPM guidance directly supports three of the five cross-cutting strategies by instructing the Regions to undertake activities in FY2013 that contribute to the cross-cutting strategies' goals. Specific examples in the FY2013 guidance include the following:

Expanding the Conversation on Environmentalism

- Data regarding state assessments, priorities and performance under the Clean Water Act (CWA) will be made public, where possible, on a regular basis in a manner easily understood and used by the public;
- Compliance data will distinguish state information from Indian country information;
- Information will be made available to communities, including tribal communities, who lack access to the internet;
- The Criminal Enforcement program will continue to develop its use of new outreach methods such as Facebook, Twitter and mobile applications to encourage the public's reporting of potential violations and to provide leads through the fugitives website <http://www.epa.gov/fugitives/>.
- **Agency Focus on Electronic Reporting:** On March 24, 2011, EPA Deputy Administrator Bob Perciasepe issued a memorandum in which he affirmed his support for using the National Environmental Information Exchange Network (Exchange Network) as the preferred means of environmental data sharing between EPA, states, tribes, and others. Also, this memorandum affirmed the unanimous ECOS resolution calling for full implementation of the Exchange Network, and represented a renewed joint commitment to success of the Network. The Office of Enforcement and Compliance Assurance supports this goal. The specific activities which must be carried out in support of this are discussed on pages 35 and 41 of this guidance.

The Environmental Information Exchange Network has provided the foundation for EPA, states and tribes to now move aggressively to convert from old fashioned paper reports to electronic reporting. To reduce burden, improve compliance, expand the information available to the public about pollution that affects them, and improve the ability of EPA, states and tribes to implement environmental programs, the Agency has commenced a comprehensive initiative to convert to electronic reporting. EPA is focusing this initiative in two main areas: (1) developing an Agency wide policy to ensure that new regulations include electronic reporting in the most efficient way; and (2) developing and then implementing an Agency plan to convert the most important existing paper reports to electronic, while also looking for opportunities to reduce or streamline outdated paper reporting. Since this work is cross-cutting, EPA has established an Agency Electronic Reporting Task Force to lead and manage this work.

The Agency invites the provision of examples to the Electronic Reporting Task Force of experiences in moving from paper to electronic reporting. We are interested in learning from the states and tribes about their successes and challenges in converting from paper reporting to electronic. The Agency will keep states and tribes informed about its progress in this initiative.

If a state or tribe would like to share information with the Electronic Reporting Task Force, please contact David Hindin (OECA) and Andy Battin (OEI) for more information.

Strengthening State, Tribal and International Partnerships

- Regions will continue to implement the CWA Action Plan in FY2013 by collaborating with states to address NPDES permitting, compliance monitoring, and enforcement activities, including work-sharing;
- A majority of program narratives in the FY2013 guidance contain specific activities regarding state and tribal relationships;
- Regions should consult, as appropriate, with tribes when conducting civil inspections and enforcement activity consistent with the applicable media and/or program-specific compliance monitoring strategies and enforcement policies, and OECA's "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy" (1/17/01). Consultations, civil inspections and enforcement activity should ensure the same degree of protection of human health and environmental protection in Indian country as elsewhere in the U.S.

Working for Environmental Justice (EJ) and Children's Health

- The impact of enforcement and compliance efforts in communities overburdened by exposure to environmental risks, including minority, low-income and indigenous communities, as well as those with greater concentrations of sensitive populations, is an important consideration as OECA undertakes investigations and compliance activities. Regions are directed to use the Agency's environmental justice tools and methodologies as they consider any environmental justice aspects to their enforcement and compliance activities.
- Specific OECA EJ performance expectations, which include children's health as appropriate, are discussed in Section II of this guidance.

OECA's national enforcement initiatives address some of the more complex pollution problems, especially those confined to a particular sector or source type, and can have positive impacts on children's health. For example:

- Reducing widespread air pollution from large sources, especially the coal-fired utility, cement, glass, and acid sectors can lessen adverse health effects such as asthma, respiratory diseases and premature death in communities overburdened by exposure to environmental risks and vulnerable populations, including children.
 - Preventing raw sewage from contaminating surface and ground waters reduces children's exposure to disease-causing pathogens or other contaminants which have potential adverse health effects.
 - Addressing the human health and environmental threats from mining and mineral processing can reduce exposure to asbestos and lead poisoning in children.
- **OECA's FY 2013 Children Health Measure:** In addition to the national initiatives and work in different media specific programs, OECA reduces risks to children through compliance monitoring and enforcement of lead based paint (LBP) rules. Recent data show that tremendous progress has been made in the continuing effort to eliminate childhood lead poisoning as a national public health concern. Based on data from the U.S. Centers for Disease Control and Prevention

(CDC), EPA has measured progress by tracking reductions in the number of children with elevated blood lead-levels (EBLLs) of 10 micrograms per deciliter (mg/dL) or higher. CDC data released in 2009 indicated that the incidence of childhood lead poisoning at 10 mg/dL has declined *from* approximately 1.6 percent of children in 2002 *to* 0.9 percent of children in 2006.

At the same time, however, new data are revealing adverse health effects to children at lower lead levels than previously recognized. Thus, even though initial gains have been encouraging, EPA wishes to achieve further reductions in the incidence of children with EBLLs lower than 10 mg/dL. Monitoring and enforcement efforts to promote compliance with LBP rules, particularly the Renovation, Repair and Painting (RRP) Rule, advance the goal of eliminating and preventing LBP hazards, which are the primary single cause of childhood lead poisoning. These efforts support the Agency's mission to eliminate childhood lead poisoning. For this reason, the LBP component of OECA's TSCA 01 ACS commitment, which focuses on inspections, will serve as OECA's FY 2013 measure of compliance work being done to protect children's health.

Better Serving Communities

- In FY 2013, EPA will institutionalize its commitment to support communities both through the resources EPA offers and the means by which we coordinate among programs. Since March 2010, when Deputy Administrator Bob Perciasepe convened a multi-region, multi-program effort to steer the Agency towards using communities as one of the Agency's "organizing principles," significant progress has been made. A subset of 27 "community-based programs" have been identified that, while not exhaustive, illustrate the investment the agency has made across offices in direct assistance to communities. For example, since its inception in 1994, OECA's Environmental Justice Small Grants Program has awarded more than \$23 million in funding to 1,253 community-based organizations, and local and tribal organizations working with communities facing environmental justice issues. Additionally, geomapping capabilities were completed in March 2012 to help the Agency identify and track where EPA is working in communities through grants and technical assistance. The geomapping has the potential to better coordinate Headquarters and regional efforts and improve the ability to identify potential gaps in service to communities. Finally, a new grants policy went into effect on March 31, 2012 establishing a 'One EPA' approach to coordinating and implementing community-based grant programs.
- In implementing EPA's long-term goals for an improved environment and better public health in communities, for FY 2013, Regions are asked to consider the following opportunities where appropriate:
 - 1) Strengthen involvement and increase investment in one or more of the Agency's programs that comprise the Community-Based Coordination Network; (Contact: John Foster, Office of Sustainable Communities, at foster.john@epa.gov).
 - 2) Support ongoing inter-agency partnerships that align resources or activities in communities (e.g. the Interagency Working Group on Environmental Justice, the HUD-DOT-EPA Partnership for Sustainable Communities, the Urban Waters partnership and others);
 - 3) Adhere to Office of Grants and Disbarment's (OGD's) Community-Based Grants Policy (http://intranet.epa.gov/ogd/policy/gpi_12_02_community_based_grants_03_02_12.pdf),

- including implementing identified best practices for streamlining competitions, considering combining competitions, and implementing protocols to geo-code projects for inclusion in Agency-wide mapping;
- 4) Work with OGD and the Office of Environmental Justice (OEJ) to post competition schedules and other grant information;
http://www.epa.gov/ogd/training/resources_for_communities/community_grants_table.htm.
- 5) Utilize OSWER's Technical Assistance Services for Communities (TASC) contract to provide technical assistance for communities that find it difficult to manage grants; (Contact: Howard Corcoran, OARM, at corcoran.howard@epa.gov).
- 6) Increase the amount of training provided to regional staff to work within tribes and other communities (for example, OITA's Working Effectively with Tribal Governments online training, <http://intranet.epa.gov/aieointr/training/tribal/EPA/mainmenu/launchPage.htm>, the EJ Fundamentals Course available through <http://intranet.epa.gov/oeca/oc/neti/index-new.html>); and
- 7) Work with Marsha Minter of OSWER, Charles Lee of OECA, or John Frece of Office of Policy [co-leads for a new community-based KPI in FY12] to identify a pilot project in each region to implement the best practices generated through an assessment conducted under the FY12 Community-Based KPI. (Contacts: minter.marsha@epa.gov, lee.charles@epa.gov, frece.john@epa.gov.)

Compliance with Title VI of the Civil Rights Act of 1964

- It is a priority of the Agency to ensure compliance with Title VI of the Civil Rights Act of 1964, <http://www.epa.gov/civilrights/t6lawrg.htm>. This statute prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- As required by implementing EPA regulations at 40 C.F.R. Part 7, EPA applicants must complete EPA Form 4700-4 to demonstrate compliance with Title VI and other non discrimination statutes and regulations, http://www.epa.gov/ogd/forms/adobe/4700-4_sec.pdf. The regulations also impose specific obligations on grant recipients, including providing compliance information, establishing grievance procedures, designating a Title VI Coordinator, and providing notices of non-discrimination, <http://www.epa.gov/civilrights/docs/40p0007.pdf>.
- Title VI requires EPA financial assistance recipients to provide meaningful access to LEP individuals. To implement that requirement, and consistent with Executive Order 13166, <http://www.epa.gov/civilrights/docs/eo13166.pdf>, the Office of Civil Rights (OCR) issued guidance to recipients entitled, "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf
- OCR also published a Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- In coordination with the grants management community, OARM will work with OCR and the Office of General Counsel to develop and implement appropriate grant conditions,

training programs and monitoring strategies to help achieve compliance with Title VI and implementing regulations and guidance.

- All recipients of EPA financial assistance have an affirmative obligation to implement effective Title VI compliance programs and ensure that their actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. Recipients should be prepared to demonstrate that such compliance programs exist and are being implemented or to otherwise demonstrate how they are meeting their Title VI obligations.

F. Significant Changes from FY2012

The Office of Enforcement and Compliance Assurance's FY 2013 guidance continues to focus on the Administrator's and Assistant Administrator's goals, and on aligning enforcement and compliance priorities with those of the other EPA national program managers as appropriate. The FY 2013 guidance describes specific expectations for Regions in implementing the Assistant Administrator's priorities and explains how the enforcement program supports the priorities of other EPA national programs. Some notable changes in specific programs contained within this guidance are as follows:

- **Next Generation Compliance:** OECA has identified a critical new investment area aimed at instituting next generation compliance practices to build 21st century technical capabilities and efficiencies in assuring compliance. Consistent with EPA's desire to better address large regulated universes with approaches that go beyond traditional inspection and enforcement activities, OECA and the Regions are supporting the Agency's Next Generation Compliance by promoting electronic monitoring and reporting to improve targeting and transparency and advancing new monitoring technologies to identify violations impacting public health and harming the environment. For consent decrees that include a requirement to conduct a performance test(s), Regions should seek having electronic copies of required performance test reports submitted to the Agency through the Electronic Reporting Tool (ERT) when feasible.
- **Budget Challenges for FY 2013:** Our top priority is ensuring that we address the most important violations posing a threat to public health or the environment. It is also essential that we invest in new ways to improve the effectiveness of our work, such as monitoring, electronic reporting, and innovative enforcement approaches. Maintaining or even increasing our investment in these top priorities during lean budget times requires us to make difficult choices, and to work in partnership with States and Tribes to ensure that limited funds are focused on those compliance and enforcement initiatives that will deliver the greatest benefit to people's health.

In order to ramp up work on these priorities in a time of declining budgets, we necessarily will have to cut back in other areas in FY13. In some cases, progress made in the past allows for reduced effort today. In other programs, new electronic tools make it possible to do more with less, or we can set a higher threshold for taking federal enforcement. In some cases, we will, out of necessity, need to consider scaling back on important work. However, in every case we will retain our capacity to address the most serious national problems, and will also continue to

respond to the most egregious cases using criminal enforcement authorities, where that is appropriate.

Although all NPM Guidance documents are being finalized today (per the Agency's annual schedule), we are still in the process of discussing the content and schedule for the budget adjustments portion of the Guidance. With the participation of all the Regions and OECA Offices, we are thinking through the issues associated with implementation of these reductions, and considering the input from States and Tribes. We also plan to re-train staff who work in the areas of reduced emphasis to take on other compliance and enforcement work. Discussions of the budget adjustment plans will continue for the next several months.

Some changes to the February 10, 2012 proposed OECA NPM Guidance have already been made, based on early comments from the States and Regions. For example, due to state concerns, we have decided to retain at least a limited national presence in all of the adjustment areas and are no longer proposing to completely disinvest in any programs. Some of the budget adjustments outlined in this final guidance may be further revised as we continue work on implementation plans.

So that we can transition to the changed profile given budget adjustments, this guidance requests that Regions not initiate new work (e.g., inspections) in the areas under consideration for reduction, without prior consultation with senior managers in Headquarters. There will be more discussion on the consultation process before FY2013. Given the importance of compliance monitoring and enforcement work, it will be critical to maintain travel funds for those purposes, and to scale back on other types of travel instead where Regional travel funds are limited.

Two of the budget adjustment areas are not specific to any one media program and are not discussed in the media specific sections. For that reason, they are discussed in this section as follows:

Compliance Assistance (non-centers): Advances in information technologies and the widespread availability of computer access make it possible for EPA to reconsider the delivery of compliance assistance. EPA can provide on demand assistance via the web for many regulated parties. States provide the vast amount of direct, day-to-day (or "retail") compliance assistance, while third-party providers (such as academic institutions, non-profits, trade associations or private consultants) offer more technical guidance and best practices, often on a sector-specific basis. EPA programs have an important role to provide compliance guides for new regulations that impact small business and do outreach as rules are being promulgated. Anticipating tight budgets in FY13 and beyond, EPA's enforcement program needs to focus its limited resources on the most pressing environmental and noncompliance problems. In that context, OECA is planning to reduce its investment in compliance assistance and direct our compliance assistance resources where they can have the greatest national impact. Advances in IT make this greater impact possible, as we focus on wholesale distribution of compliance guides and materials, especially via the web, development of two-way communication (made

possible by electronic reporting) to deliver electronic assistance, and maximizing the use of inspectors to direct companies to assistance resources.³

Audit Policy/Self-Disclosures: Since implementation of the Audit Policy began in 1995, EPA's enforcement program has increased its understanding of environmental compliance auditing, and believes that internal reviews of compliance have become more widely adopted by the regulated community, as part of good management. In addition, EPA has found that most violations disclosed under the Policy are not in the highest priority enforcement areas for protecting human health and the environment. EPA believes it can reduce investment in the program to a limited national presence without undermining the incentives for regulated entities to do internal compliance reviews to find and correct violations. As we reduce investment in this program, EPA is considering several options, including a modified Audit Policy program that is self-implementing.⁴

- **Small Business Compliance Policy:** EPA will continue to implement this Policy. Although this is not a change for FY 2012, we are highlighting this upfront in response to questions received.
- **RCRA Subtitle C Program:** OECA deleted the ACS commitment RCRA 04 for financial assurance. However, the NPM Guidance emphasizes that financial assurance compliance evaluations should be part of any Compliance Evaluation Inspection.
- **Toxic Substance Control Act (TSCA) Program:** Starting in FY2013, the One TSCA approach includes activities in each TSCA focus area not subject to FY 2013 budget adjustment. The extent of those activities is dependent on the suite of problems the Region identifies, and the resources available to address them. Many of the activities are likely to be ones that Regions have previously conducted, but were not captured in the ACS process.
- **CAA 112(r) Program:** Potential changes to the definition of high risk facilities under the CAA 112(r) program have been reflected in this year's NPM Guidance.
- **Air Toxics National Enforcement Initiative:** Industrial facilities emit significant amounts of hazardous air pollutants (HAPs). Causes include noncompliance with regulations intended to prevent the incomplete combustion of HAPs in steam-assisted flares due to low heat content and over-steaming. EPA has determined that these problems are particularly likely to occur at petroleum refineries and chemical, petrochemical, and polymer manufacturers. Under the Air Toxics National Enforcement Initiative (NEI), the Regions are targeting compliance evaluations (including CAA Section 114 information requests) at facilities in these sectors. The goal of the flaring enforcement enhancements are to improve EPA's efficiency and effectiveness in targeting, enforcing against, and reducing illegal emissions of HAPs from flares. We will do so by piloting innovative, efficient enforcement approaches, i.e., a flaring efficiency enforcement

³ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

⁴ See footnote above.

alert combined with individual-facility flaring notices, and using HQ contractor resources to enhance the Regions' ability to evaluate facilities' compliance based on their 114 responses, respond to violations, and meet existing ACS commitments more efficiently. In addition, we will use the results to demonstrate compliance and pollution control impacts beyond individual flaring enforcement actions to show general deterrence.

- **Integrated Municipal Stormwater and Wastewater Planning Approach:** EPA engaged stakeholders to develop and implement an Integrated Municipal Stormwater and Wastewater Planning Approach Framework to address municipalities' numerous CWA obligations. This approach will allow municipalities to prioritize and sequence CWA requirements in a manner that addresses the most pressing public health and environmental protection issues first, while maintaining existing regulatory standards that protect public health and water quality. All or part of an integrated plan may be incorporated into the remedy of enforcement actions and/or into NPDES permits. After the details of the development and implementation of this Approach are finalized, OECA will decide what modifications to the National Municipal Enforcement Initiative are necessary to promote and implement it. More detail about the changes and their implications will be made available soon in follow-up to a series of integrated planning workshops held with states, local governments and environmental groups. Information can be found at: <http://cfpub.epa.gov/npdes/integratedplans.cfm>.
- **Preparation for implementing the proposed NPDES Electronic Reporting Rule:** This guidance identifies activities the Regions and states must complete to prepare for implementing the proposed NPDES Electronic Reporting Rule, including support of the National Environmental Information Exchange Network (Exchange Network).
- **EJ Screen:** OECA will continue to participate in the cross-agency work of the EJ Screen Workgroup, which is developing a nationally consistent EJ screening tool (EJ Screen) for Agency-wide use. In the interim, OECA will continue to use its internal tool, the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) and other information to support targeting and development of enforcement actions and to enhance performance reporting. As we implement Plan EJ 2014, it will be important to ensure that OECA's internal guidance to enforcement case teams is consistent with the approach(es) being developed by the EJ Screen Workgroup. Therefore, upon completion of EJ Screen, OECA expects to phase out EJSEAT and other screening tools, and will be working with Regions to provide guidance on consistent use of EJ Screen around the country. Sections in this guidance referring to EJSEAT will change as a result of the transition to EJ Screen.
- **FY 2013 Children's Health Measure for OECA:** As proposed, the Lead Based Paint component of OECA's TSCA 01 ACS commitment, which focuses on lead inspections, will serve as OECA's FY 2013 measure of compliance work being done to protect children's health.
- **Inspector Credentials:** In FY 2013, Regions will be required to re-credential many of their federal inspectors. Documentation of the requirements and the process for obtaining credentials are established in EPA Order 3510. EPA Order 3510 also requires that each EPA office which prints and distributes credentials (i.e. federal credentials issued to state and tribal inspectors to conduct inspections on behalf of EPA) must conduct an annual inventory including

an annual physical possession check of 10% of the credentials. OECA will work the Regions to establish a schedule and necessary steps for the re-credentialing of inspectors.

- **Compliance Monitoring National Dialogue:** OECA will be holding a national dialogue on how to expand the range of compliance monitoring activities to be credited under media Compliance Monitoring Strategies (CMS). This is necessary as the regulated universe continues to grow while federal and state resources become scarcer. Traditionally, on-site compliance inspections and investigations have been the primary means for providing coverage of the regulated universe. There are many additional activities regulatory agencies do to monitor facility-level compliance that can and should be considered along with inspections and investigations as contributing to our coverage goals. EPA Regions, states and tribes will be invited to participate in this national dialogue in 2012, and should be ready to implement the outcome of this discussion in 2013.

G. Contacts

For general questions or comments on the *OECA National Program Managers Guidance* please contact:

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SECTION I: OECA GUIDANCE DEVELOPMENT AND FEEDBACK PROCESS

OECA has structured the NPM Guidance to focus on the performance expectations of the national enforcement program in terms of: 1) achieving the Enforcement Goals; 2) making progress in attaining compliance within the national enforcement initiative areas; and 3) supporting the EPA program offices in achieving their environmental and public health goals. EPA posted the FY 2013 draft NPM Guidance to allow Regions, states, tribes, and others to review and comment on the draft. OECA responded to the comments and incorporated changes, as needed, in the final document. This final guidance and a Response to Comments Summary have been posted on the Internet identifying the changes made in the guidance as a result of comments on the draft.

SECTION II: SPECIFIC ENVIRONMENTAL JUSTICE PROGRAM PERFORMANCE EXPECTATIONS

OECA plays a dual role in setting performance expectations for environmental justice. First, OECA oversees national and regional compliance assurance and enforcement programs. In this role, OECA ensures that facilities in communities disproportionately impacted by environmental problems are complying with the law. OECA aggressively applies regulatory tools to protect these communities, engages our regional, federal, state and tribal partners to meet community needs, and fosters community involvement in EPA's decision-making processes by making information available, as appropriate.

Second, OECA is the National Program Manager for the Agency's Environmental Justice (EJ) Program, operating as the Office of Environmental Justice (OEJ). The EJ Program promotes environmental justice to foster public health and sustainability in overburdened communities and works to enable all major EPA Headquarter and Regional offices to address environmental justice as part of their day-to-day business. In FY13, the OEJ will continue its work with EPA Regional Offices to provide communities with funding, technical support, and tools to empower them to take action to address issues in their communities.

OECA and all Regions are implementing the strategies and activities outlined in Advancing Environmental Justice through Enforcement and Compliance, one of the five cross-cutting areas identified for Agency-wide action in EPA's Plan EJ 2014. OECA's goals under this Plan are to fully integrate consideration of EJ concerns⁵ into the planning and implementation of program strategies, case targeting strategies, and development of remedies in enforcement actions to benefit overburdened communities⁶. OECA also plans to accelerate efforts to communicate more

⁵ EPA defines "environmental justice" as the *fair treatment and meaningful involvement* of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EJ concerns with respect to "fair treatment" arise where there are actual or potential disproportionate impacts on minority, low-income, or indigenous populations that exist prior to or that may be created by a proposed action. EJ concerns with respect to "meaningful involvement" arise where there is an actual or potential lack of opportunities for minority, low-income, or indigenous populations, or tribes, to effectively and appropriately participate in decision-making. These terms are discussed in more detail in Part I of EPA's "*Interim Guidance on Considering Environmental Justice during the Development of an Action*" (<http://www.epa.gov/compliance/ej/resources/policy/ej-rulemaking.html>).

⁶ In Plan EJ 2014, EPA uses the term "overburdened" to describe the minority, low-income, tribal, and indigenous

effectively with vulnerable and overburdened communities about enforcement actions and program activities.

OECA has developed five strategies for Advancing Environmental Justice through Enforcement and Compliance⁷:

1. Advance EJ goals through selection and implementation of National Enforcement Initiatives.
2. Advance EJ goals through targeting and development of compliance and enforcement actions.
3. Enhance use of enforcement and compliance tools to advance EJ goals in Regions' geographic initiatives to address overburdened communities.
4. Seek appropriate remedies in enforcement actions to benefit vulnerable and overburdened communities and address EJ concerns.
5. Enhance communication with affected communities and the public regarding EJ concerns and the distribution and benefits of enforcement actions, as appropriate.

For FY2013, OECA will address our Plan EJ 2014 goals through the following performance expectations.

1. Advance EJ goals through Selection and Implementation of National Enforcement Initiatives

OECA will continue to look for opportunities to address EJ concerns as it implements the National Enforcement Initiatives for FY2011-13. A "Strategy Implementation Team," consisting of OECA headquarters and regional representatives, developed implementation strategies and performance measures for each of the National Enforcement Initiatives. Each initiative's strategy discusses how EJ concerns can be addressed in carrying out its activities, *e.g.* by considering EJ concerns. The Agency also will seek appropriate judicial and administrative remedies that reduce or eliminate pollution that may have a disproportionate impact on overburdened populations.

To support EPA's cross-cutting fundamental strategy on Environmental Justice and Children's Health, OECA's EJ Council is evaluating how existing program initiatives/activities can be enhanced, as part of Plan EJ 2014, to maximize environmental and human health benefits for disproportionately burdened communities. In FY2013, OECA and all Regions will implement the National Enforcement Initiatives consistent with this commitment, including reporting on these benefits.

populations or communities in the United States that potentially experience disproportionate environmental harms and risks as a result of greater vulnerability to environmental hazards. This increased vulnerability may be attributable to an accumulation of both negative and lack of positive environmental, health, economic, or social conditions within these populations or communities.

⁷ The link to OECA's Plan EJ 2014 implementation plan is: http://www.epa.gov/environmental_justiceplan-ej/ce-initiatives.html

2. Advance EJ Goals through Targeting and Development of Compliance and Enforcement Actions

OECA and the Regions place a high priority on addressing EJ concerns as the specific targeting and case selection strategies for both National Enforcement Initiative and other enforcement cases are implemented. As discussed above, the Strategic Implementation Teams for each Initiative have identified potential opportunities to protect and benefit overburdened communities when selecting and developing specific cases to achieve the Initiative goals. For example, facilities that are impacting or threatening the drinking water supplies of poor rural communities could be given priority attention when Teams are selecting specific CAFO facilities for enforcement action. OECA and the Regions will also give specific consideration and attention to overburdened communities, including those in Indian country, when selecting enforcement actions to address other important compliance problems. For example, in selecting enforcement actions to address violations of drinking water standards, we will give high priority to addressing violations at water supply systems that serve poor and tribal communities, as well as children, one of our most vulnerable populations.

OECA will continue to participate in the cross-agency work of the EJ Screen Workgroup, which is developing a nationally consistent EJ screening tool (EJScreen) for Agency-wide use. In the interim, OECA will continue to use its internal tool, the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) and other information to support targeting and development of enforcement actions and to enhance performance reporting. As we implement Plan EJ 2014, it will be important to ensure that OECA's internal guidance to enforcement case teams is consistent with the approach(es) being developed by the EJ Screen Workgroup. Therefore, upon completion of EJ Screen, OECA expects to phase out EJSEAT and other screening tools, and will be working with Regions to provide guidance on using the national tool to develop consistent use of EJ Screen around the country. Sections in this guidance referring to EJSEAT will change as a result of the transition to EJ Screen.

COMMITMENT EJ01: HQ will analyze FY12 EJSEAT data to consider developing a baseline for a budget measure related to case initiations in areas with EJ concerns.

- In FY 2013, OECA will evaluate and begin post-pilot implementation of the *Technical Directive: Reviewing EPA Enforcement Cases for Potential Environmental Justice Concerns and Reporting Findings to the ICIS Data System*. Regions and OECA will review new enforcement cases for potential EJ concerns and enter the EJ data into ICIS in accordance with the Technical Directive.
- Each region will review its civil enforcement cases initiated in FY 2013 for Environmental Justice concerns in accordance with the internal Technical Directive. All enforcement cases with an EJSEAT score of 1, 2, or 3 will receive an enhanced level of review for EJ concerns in accordance with the Technical Directive.
- In December, 2011, the Office of Criminal Enforcement issued the policy, "OCEFT Policy to Integrate Environmental Justice Concerns in Assessments of Criminal Investigations" and will use the EJSEAT, or EJ Screen when it becomes available, as part of assessments for

potential EJ concerns. OCEFT has modified its Criminal Case Reporting System (CCRS) to track EJ reviews.

3. Enhance Use of Enforcement and Compliance Tools to Advance EJ Goals in Regions' Geographic Initiatives to Address Overburdened Communities

Regions will continue to develop integrated strategies to focus on particular geographic areas in their Regions with overburdened communities that are disproportionately affected by environmental problems. Integrated strategies consider the full range of EPA's enforcement and compliance assurance tools, as appropriate, to identify and address environmental problems in areas with EJ concerns that are caused or made worse by violations of federal environmental laws.

- Regions, together with states, tribes and other partners as appropriate, should evaluate facility compliance in overburdened communities selected for strategic focus. These evaluations should be targeted using the best available data and methods in light of the overall objectives of EPA's enforcement and compliance assurance work. In this way, community-focused initiatives will complement the national enforcement initiatives and other sector-based and program-specific enforcement activities, meeting OECA's goal of strategically using limited compliance monitoring and enforcement resources to address the most significant issues first.
- Regions should tailor compliance and enforcement actions to enhance EPA's ability to gain environmental benefits in overburdened communities. For example, this could include use of multi-media inspections and/or process inspections to comprehensively address potential impacts from violations at a given facility.
- OECA and the Regions should consider activities to effectively reach large numbers of small sources with environmental violations that have significant local impacts on overburdened communities.

4. Seek Appropriate Remedies in Enforcement Actions to Benefit Vulnerable and Overburdened Communities and Address EJ Concerns

OECA and the Regions, and the Environmental Enforcement Section of the U.S. Department of Justice (DOJ) are jointly heightening their focus in civil enforcement cases on potential options to obtain meaningful environmental benefits to specific overburdened communities impacted by violations of federal environmental laws. These efforts go beyond traditional injunctive relief to stop illegal pollution, to provide for mitigation of the environmental harm caused by illegal pollution and, where appropriate and agreed to by defendants, Supplemental Environmental Projects (SEPs) to provide benefits to communities. For example, in a case involving illegal discharges of pollutants from a facility that damaged a tribal fishing area, the relief ordered (in addition to stopping the illegal discharges) included restocking the fishing ground. EPA has also been successful in obtaining SEPs from defendants to retrofit diesel school buses to reduce children's exposure to air pollution. We will continue and accelerate these types of efforts to reduce pollution burdens that have a disproportionate impact on overburdened populations.

In addition to the benefits that can be obtained for overburdened communities through judicial and administrative enforcement actions, there may be other, parallel opportunities to obtain additional benefits for the community through cooperation with other federal agencies, state or local governments, and/or the business community. For example, the U.S. Department of Housing and Urban Development may be able to provide housing assistance or other community benefits in a “brownfields” area where EPA has taken enforcement action to clean up environmental contamination. State or local governments may have projects or grant funding that can be used to improve the community’s infrastructure or environment in an area that is also the focus of EPA compliance or enforcement action. In situations where air emissions from multiple industrial facilities continue to adversely affect community health despite their compliance with emission limitations, some business communities may be willing to work together to take voluntary action to further reduce the emissions that adversely affect the community. Examples of such voluntary actions may include: a health clinic established and operated together with local, state and community members; a household hazardous waste collection drive; a local company voluntarily agreeing to post compliance monitoring information directly on a public website to allow community members to check on compliance; “good neighbor agreements” between local companies and communities to address facility impacts not regulated by a permit or other law. OECA and the Regions will identify specific opportunities, as appropriate, in cases or regional geographic initiatives, to work with other federal agencies, state and local governments, and/or the business community to complement and leverage benefits resulting from enforcement activities. OECA and the Regions will document and share recommendations and best practices for taking action on these opportunities.

OECA’s criminal enforcement program is engaged in similar activities. In cases considered to have potential EJ concerns the criminal investigation team will meet with the regional EJ coordinator to obtain additional information supporting the preliminary EJ determination as well as the community’s health and environmental problems. OCEFT will increase efforts to benefit affected communities by working with DOJ to (1) explore innovative uses of criminal sentencing options, e.g., community service or environmental compliance plans, and (2) take into account information obtained pursuant to the Crimes Victim’s Rights Act (CVRA) when developing environmental crimes case resolutions, e.g., restitution. The CVRA provides crime victims with multiple rights, including the right to be heard in a sentencing proceeding and the right to full and timely restitution. The CVRA also authorizes the courts to fashion reasonable procedures to give effect to the statute’s requirements when multiple crime victims – such as a neighborhood or community – are involved. Restitution and community service may partially or fully remedy the harm caused by the violation(s), as well as improve the environment of the affected overburdened communities and the health of its residents. Even where the specific pollution and/or harmful effects caused by the crime may no longer be mitigated or remedied, community service can address similar threats in the same ecosystem or general geographic area.

5. Enhance Communication with Affected Communities and the Public Regarding EJ Concerns and the Distribution and Benefits of Enforcement Actions, As Appropriate

OECA and EPA Regions, with the Department of Justice, will continue to increase their communication with affected communities and the public about enforcement strategies and actions that may affect vulnerable and overburdened communities. OECA recognizes that communities have a legitimate need to be informed and to understand the federal government's enforcement activities to protect their environment, and to have their voices heard when solutions are being considered to redress environmental problems caused by violations of federal environmental laws that affect their community. As OECA implements Plan EJ 2014, we commit to increase our outreach to communities and to provide more information about environmental problems caused by failure to comply with federal environmental laws, our efforts to address those problems, and available judicial and administrative solutions to those problems that can address the communities' concerns and needs.

At the same time, it is important for affected communities, including Tribal governments, to understand the legitimate and essential need to protect the confidentiality of enforcement activity when a case is under development and in settlement negotiations. This is essential to assure that effective enforcement, and its ultimate benefits for the community, will not be undermined and adversely affected by premature disclosure of confidential enforcement information. While this consideration will necessarily limit the amount and kind of information that EPA is able to share with the community at various stages of enforcement activity, we are committed to sharing as much information as possible to enable communities to be informed and to have their voices heard in the determination of appropriate resolutions for violations of federal environmental laws that affect communities.

While increased communication is important, it is no less important to receive input from affected communities on potential violations. We will continue to invite tips and complaints, including through such means as OECA's on-line reporting badge and the EPA fugitives webpage.

- OECA and the Regions will review their enforcement dockets to identify communities with EJ concerns that could benefit from enhanced communication and consultation regarding enforcement activities, and provide the communities, including Tribal governments, with additional information (consistent with the confidentiality requirements needed to protect the integrity of enforcement actions).
- OECA and the Regions will also provide opportunities for communities to provide input on EJ concerns and remedies to be sought in enforcement actions that affect their communities. This information will be provided through EPA's website, local information repositories, and other appropriate means.
- To assist in identifying the risks and pollution experienced by a community due to environmental crimes and potential remedies, OECA and DOJ will consider information obtained pursuant to the Crime Victim's Rights Act (CVRA). In these situations, appropriate CVRA mechanisms may be utilized for outreach to and communication with victims, input into case resolution, and sentencing.

- OECA and the Regions recognize that EPA’s enforcement processes, *e.g.* the enforcement processes concerning hazardous waste site cleanup that affect communities with EJ concerns, are often complicated and can be difficult for the public to understand and to follow. To increase affected communities’ ability to understand our enforcement processes, EPA will continue to improve the accessibility to communities of the information provided on EPA’s website, develop and make available fact sheets to better explain EPA’s enforcement process at particular sites, and update for internal EPA use a compendium of “best practices” that will encourage and facilitate EPA employees’ efforts to make enforcement information more available to the public. EPA’s enforcement actions frequently provide significant benefits to vulnerable and overburdened communities, including reduction of air or water pollution, cleanup of toxic and hazardous waste, and additional community benefits such as diesel bus retrofits and other benefits made available through Supplemental Environmental Projects (SEPs). However, the community is able to appreciate these benefits only to the extent that it is aware of them. Therefore, OECA and the Regions will continue accelerating our efforts to communicate, through press releases, our website and other means, the benefits of our enforcement actions for vulnerable and overburdened communities, consistent with the internal memorandum entitled “*Guidance on Characterizing and Communicating Environmental Justice Benefits Achieved in Enforcement Actions*” (Sept. 2011).

SECTION III: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM AIR POLLUTION

A. Clean Air Act (CAA)

OECA addresses air pollution problems through the following CAA programs:

- Part 60 - New Source Performance Standards (NSPS)
- Part 61- National Emission Standards for Hazardous Air Pollutants (NESHAP)
- Part 63 -Maximum Achievable Control Technology (MACT)
 - Maximum Achievable Control Technology (MACT) – major sources
 - Generally Available Control Technology (GACT) – area sources
- New Source Review/Prevention of Significant Deterioration (NSR/PSD)
- Enforcement of State plans developed and approved under Sections 110 and 111(d)
- Title V Operating Permits
- Part 82-Title VI Stratospheric Ozone Protection
- Section 112(r) Prevention of Accidental Releases
- Title II (Emission Standards for Moving Sources)
- Section 129 Solid Waste Combustion

1. Implement National Enforcement Initiatives

The relevant FY 2011 – 2013 national enforcement initiatives for CAA programs are discussed below. Region-specific commitments for activities to support the goals and measures are negotiated through the ACS process.

Cutting Toxic Air Pollution that Affects Communities' Health: In 1990, Congress identified hazardous air pollutants (HAPs), currently totaling 187, that present significant threats to human health and have adverse ecological impacts (<http://www.epa.gov/ttn/atw/188polls.html>). The pollutants are known or suspected to cause cancer and other serious health effects, such as reproductive or birth defects. The threats posed by HAPs may be particularly significant for communities overburdened by exposure to environmental risks, including urban minority and low-income communities, as well as those with greater concentrations of sensitive populations. The CAA and EPA's regulations impose strict emission control requirements (known as "Maximum Achievable Control Technology" or "MACT") for these pollutants, which are emitted by a wide range of industrial and commercial facilities. For FY2011-13, EPA will target and reduce emissions of toxic air pollutants in three areas where the Agency has determined there are high rates of noncompliance: (A) leak detection and repair; (B) waste gas flares; and (C) excess emissions, including those associated with startup, shut down and malfunction. Through the Air Toxics Initiative, EPA will undertake compliance monitoring and enforcement activities to maximize environmental and human health benefits, which is particularly important for disproportionately burdened communities. As part of this effort, OECA will utilize innovative monitoring and evaluation techniques and partner with EPA's Office of Air and Radiation (OAR) and Office of Research and Development. OECA will also provide equipment and training to inspectors to enhance the effectiveness of on-site activities.

Reducing Widespread Air Pollution from the Largest Sources, Especially the Coal-fired Utility, Cement, Glass, and Acid Sectors: The NSR/PSD requirements of the CAA require certain large industrial facilities to install state-of-the-art air pollution controls when they build new facilities or make “significant modifications” to existing facilities. However, many industries have not complied with these requirements, leading to excess emissions of air pollutants such as sulfur dioxide, nitrogen oxides and particulate matter. These pollutants can be carried long distances by the wind and can have significant adverse effects on human health, including asthma, respiratory diseases and premature death. These effects may be particularly significant for communities overburdened by exposure to environmental risks and vulnerable populations, including children. In recent years, EPA has made considerable progress in reducing excess pollution by bringing enforcement actions against coal-fired power plants, cement manufacturing facilities, sulfuric and nitric acid manufacturing facilities, and glass manufacturing facilities. However, work remains to be done to bring these sectors into compliance with the CAA and protect communities burdened with harmful air pollution. Therefore EPA will continue this work as a National Enforcement Initiative for FY2011-2013. EPA will also place emphasis on compliance evaluations and enforcement actions relating to the carbon black industry.

As of January 2, 2011, EPA also began regulating greenhouse gases (GHGs) under its NSR program. EPA will endeavor to ensure these pollutants are also addressed in any process changes or modification that gives rise to NSR requirements.

Assuring Energy Extraction Sector Compliance with Environmental Laws: As the nation expands its search for new forms and sources of energy, there is an urgent need to assure that we develop “clean energy” sources that protect our air, water and land. Some energy extraction activities, such as new techniques for gas extraction, pose a risk of pollution of air, surface waters and ground waters if not properly controlled. For example, an unprecedented acceleration of natural gas leasing and development has led to a significant rise in the level of air pollution throughout the intermountain West. Drilling and fracking activities have led to concerns about ground water pollution and the safety of drinking water supplies in various parts of the country. As part of OECA’s energy extraction enforcement initiative, EPA is utilizing a range of its authorities, including the Clean Air Act and Clean Water Act to address noncompliance from natural gas extraction and production activities that may cause or contribute to adverse public health impacts.

2. Link with Top Office of Air and Radiation Priorities

OECA addresses top OAR priorities in the following ways:

- **Greenhouse Gases (GHG):** OECA continues to support the Agency’s climate strategy by recognizing reductions of global warming pollution in settlements of enforcement actions. OECA and OAR will implement a National Implementation Strategy for the Greenhouse Gas Reporting Program, which will provide guidance to Regions on compliance monitoring and enforcement activities to support the integrity of the GHG monitoring and reporting system. As noted above, OECA will also ensure that sources undertaking certain process changes or modification that result in significant GHG emissions go through proper New Source Review permitting.

- Air Toxics in Communities: OECA will address this Agency priority through the 2011 – 2013 National Enforcement Initiative - cutting toxic air pollution that affects communities' health. OECA also is working closely with OAR and ORD to reduce toxic air pollution through standards, permitting, compliance monitoring and assistance activities, and enforcement, especially in communities overburdened by environmental problems.

3. Aggressively Go After Pollution Problems That Make a Difference in Communities

Air pollution is of great concern to communities both near its source and remotely located. Air pollutants that are emitted closer to the ground, for example as a result of equipment leaks or low stack height, can cause disproportionate exposure for neighboring communities. In industrial areas, these communities frequently have significant low income and minority populations. Serious health effects caused by air pollution include difficulty in breathing, exacerbation of respiratory and cardiac conditions, and cancer.

In addition to the activities being conducted pursuant to the national enforcement initiatives, Regions and delegated state, tribal and local agencies should:

- Implement programs in accordance with existing national compliance and enforcement policy and guidance [e.g., the CAA Stationary Source Compliance Monitoring Strategy (CMS), the CAA National Stack Testing Guidance, the Timely and Appropriate Enforcement Response to High Priority Violations (HPV Policy)]; and the Area Source Implementation Guidance to address significant air pollution problems that adversely affect impacted communities with special attention directed toward reducing toxic air pollution. Regions should work with delegated state, tribal and local agencies to ensure that they are familiar with national guidance, aware of the flexibilities within the guidance, and implement their programs consistent with the guidance.
- To identify the most important air pollution problems and the most serious violations, use targeting tools and other information, including, but not limited to, the National Scale Air Toxics Assessment (NATA) data, chemical toxicity data, non-attainment areas, and the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT). Community input should also be considered. Regions and delegated agencies should continue to work with EPA Headquarters to develop new targeting tools to help focus resources on the most important problems.
- Have a clearly defined process for identifying, targeting, evaluating, prioritizing, and responding to CAA violations.
- Work together to initiate civil and criminal enforcement actions, as appropriate, and whenever necessary to protect communities by addressing and ultimately resolving serious air violations in order to bring sources into compliance.
- Evaluate all violations, determine an appropriate response, and take timely and appropriate actions against facilities determined to have High Priority Violations (HPV).
- Enter data in the Air Facility System (AFS) on all federally-reportable violations, not just HPVs, consistent with the "Clarification Regarding Federally-Reportable Violations for Clean Air Act Stationary Sources" ("2010 FRV Clarification") issued on March 22, 2010.
- Negotiate settlements and track compliance with consent decrees and administrative orders and take all necessary actions to ensure compliance with the terms of federal enforcement actions.

- Participate in a national dialogue to broaden the types of activities that may be counted as compliance monitoring under the CAA CMS. Traditionally, on-site compliance evaluations and investigations have been the primary means for undertaking coverage of the regulated universe. However, as the regulated universe of sources continues to expand and challenge our ability to conduct on-site evaluations, EPA and delegated agencies need to use available resources in the most effective manner to determine facility compliance.

The CAA CMS does currently encourage the use of a variety of techniques to determine compliance [on-site and off-site Full Compliance Evaluations (FCEs), Partial Compliance Evaluations (PCEs), and Investigations]. Nevertheless, a national dialogue to identify additional activities and analyses that provide facility-specific compliance status information would add important tools and techniques to our compliance monitoring toolbox. As additional activities are identified, EPA will consider how to incorporate them into the CAA CMS and the annual negotiations between Regions and delegated agencies regarding commitments for compliance monitoring plans.

In addition, the Regions should:

- Continue any on-going investigations and initiate new ones, as appropriate. Activities reported as investigations should meet the definition of an investigation as provided in the CMS and minimum data requirements. Regions must review and approve state implementation plans (SIPs) as well as track the compliance status of sources within various regulatory programs under the Clean Air Act. Both initiated and completed investigations are to be reported in AFS.
- Review Title V permits consistent with national guidance and ensure the delegated agencies/tribes are reviewing the certifications consistent with the CMS. Regions also should ensure that Title V permits do not shield sources subject to a pending or current CAA enforcement action or investigation, and that draft Title V permits include appropriate placeholder language for the applicable requirement at any affected units. Regions should ensure that consent decree requirements, including required schedules of compliance are incorporated into underlying federally enforceable non-Title V and Title V permits.
- Inspect federal facilities, initiate enforcement actions to address non-compliance at federal facilities, and seek penalties, where appropriate, consistent with the 1997 penalty policy for CAA violations by federal agencies.
- Perform CAA section 112(r) inspections at regulated facilities in the Region, including high risk facilities. A high risk facility is one that meets one or more of the following criteria: 1) facilities whose reported Risk Management Program (RMP) worst-case scenario population that exceeds 100,000 people; 2) any RMP facility with a hazard index greater than or equal to 25; and/or 3) facilities that have had one or more significant accidental releases within the previous five years. (Note: facilities that have only program 1 processes⁸ are not considered

⁸ **Program 1:** Processes which would not affect the public in the case of a worst-case release (in the language of Part 68, processes “with no public receptors within the distance to an endpoint from a worst-case release”) and with no accidents with specific offsite consequences within the past five years are eligible for Program 1, which imposes limited hazard assessment requirements and minimal prevention and emergency response requirements.

high risk). Inspections at high-risk facilities should also include an evaluation of compliance with applicable EPCRA and CERCLA requirements. Regional program managers may, after consultation with and approval by headquarters, alter the population and/or hazard index thresholds for their region in order to include additional facilities on the regional high-risk list. Regions may use this approach to account for region-by-region variations in population density, types of covered facilities, facility geographic clustering or other factors. However, all changes to the high-risk criteria must first be approved by headquarters.

- Evaluate facilities that experience significant chemical accidents to determine compliance with CAA sections 112(r)(1) and (7) and pursue an appropriate enforcement response for any violations.
- Conduct CAA section 112(r) inspections in accordance with the 2011 “Guidance for Conducting Risk Management Program Inspections under Clean Air Act Section 112(r)” This document established final EPA policy on involvement of facility employees and employee representatives in EPA and delegated agency on-site compliance inspections as provided for in CAA section 112(r)(6)(L).
- Focus on identifying RMP non-filers and initiating enforcement in accordance with the June 30, 2010 memorandum titled ‘Identification of Facilities Subject to 40 CFR Part 68’. Settle or litigate cases filed in years prior to FY 2013.
- Exercise authority in accordance with the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Amendments to the CAA Civil Penalty Policy.
- Ensure compliance with environmental statutes in Indian country unless and until a Tribe obtains primacy. Regions should, when appropriate, authorize state and tribal inspectors to conduct compliance evaluations on EPA’s behalf. Authorization decisions, training, and tracking of state and tribal inspectors should be undertaken consistent with OECA’s *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004).
- EPA Order 3510 requires that each EPA office which prints and distributes credentials (i.e. federal credentials issued to state and tribal inspectors to conduct inspections on behalf of EPA) conduct an annual inventory, including an annual physical possession check of 10% of the credentials.
- Support the Agency’s Next Generation Compliance by promoting electronic monitoring and reporting to improve compliance, transparency and targeting as well as by advancing new monitoring technologies to enhance the ability to identify violations that may harm public health and/or the environment. For example, for consent decrees that include a requirement to conduct a performance test(s), Regions should seek having electronic copies of required performance test reports submitted to the Agency through the Electronic Reporting Tool (ERT) when feasible.

COMMITMENT CAA04: The number of compliance evaluations (or other agreed upon compliance monitoring activities pursuant to the national dialogue on CAA compliance monitoring) to be conducted by the Regions at majors sources, 80% synthetic minors, and other sources (as appropriate). [Note: Region should break out evaluation projections by source classification and by compliance monitoring category (FCE, PCE, and Investigations).] In the comment section, each region should also provide the number of federal facility FCEs, PCEs and investigations. Projected investigations under this commitment are those investigations initiated by the Regions for the air

enforcement program outside of the National Enforcement Initiatives, and identified by the air program (e.g., MACT, NSPS).

4. Reset Our Relationships with States and Tribes

The Regions should work with the delegated state, local and tribal agencies to identify priorities and align resources to implement the above commitments. This includes:

- Holding annual planning meetings with senior federal and state management to discuss air quality standards, permitting, and enforcement when developing program goals and annual monitoring and enforcement work plans. Convening routine and regular (several times per year) meetings with senior state management to assess progress in how the state has been performing overall in its implementation of the program. These meetings may be held in person or through conference calls or other venues, as appropriate. Regular frequency of these meetings is strongly suggested as a best practice for ensuring progress in meeting goals. Such meetings also will help to further region/state/local communications to ensure resources are used most effectively to address the most significant environmental sources of pollution and the most serious noncompliance.
- In instances where a delegated state, tribe or local agency is not meeting performance expectations, EPA Regions should focus oversight resources to the most pressing performance problems and work to demonstrably improve the delegated agency's performance through these actions. The Regions need to take action when necessary to raise awareness about issues needing attention to achieve the goals of the federal environmental laws and ensure a level playing field between and among states and Indian Country. The Regions should ensure delegated agencies implement compliance monitoring and enforcement programs in accordance with national guidance/policy (e.g., the CAA CMS; HPV Policy; CAA National Stack Testing Guidance; Area Source Implementation Guidance), and consistent with revisions to national emission standards, including the treatment of emissions from startup, shutdown, and malfunction events. The Regions should monitor the level and quality of efforts undertaken by the delegated agencies to ensure strong enforcement of environmental laws. In the absence of an appropriate response by a delegated agency, the Region should take enforcement action to address serious violations. Enforcement actions, whether taken by the Regions, delegated states, tribes or local agencies, should be timely, appropriate, and accurately reported.
- Negotiating facility-specific CMS plans with all delegated agencies. Throughout the year, the Regions are to be evaluating progress and working with delegated agencies to revise such CMS plans as necessary. Such planning processes are to aid the delegated agencies in fully utilizing the flexibilities available in the CMS and tailoring strategies to state/local-specific circumstances.
- Having frequent (at least monthly) discussions with delegated agencies to ensure consistent implementation of the HPV Policy.
- Implementing the State Review Framework (SRF) for the CAA Program and ensuring progress with corrective actions identified in the SRF reports.
- Regional direct implementation in Indian country includes applying the various CAA compliance monitoring strategies and enforcement policies, and *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)*. *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* contains

procedures for consultation with federally-recognized tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA's consideration of enforcement actions. The threshold criteria are not intended to, and should not, result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the U.S.

COMMITMENT CAA06: Ensure that delegated state, tribal and local agencies implement their compliance and enforcement programs in accordance with the CAA CMS and have negotiated facility-specific CMS plans in place. The Regions are to provide the number of FCEs at majors and 80% synthetic minors to be conducted by individual state/local agencies to demonstrate program implementation consistent with CMS. However, if a delegated agency negotiates with a Region an alternative CMS plan or alternative activities (pursuant to the CAA CMS national dialogue), this commitment should reflect the alternative plan. [Note: Break out evaluation and activity projections (e.g., FCEs; PCEs included in alternative plan) by source classification.] Prior to approving an alternative plan, Regions should consult with the Office of Compliance (OC) and provide OC with information on how the state, tribal or local agency compliance monitoring air resources will be redirected and the rationale for making the change.

5. Improve Transparency

The Regions should:

- Work with the delegated state, tribal and local agencies to verify that their compliance and enforcement data is added to the Air Facility System (AFS), the national repository for air stationary source compliance monitoring and enforcement data.
- Enter complete, accurate, and timely data consistent with the AFS Information Collection Request (ICR) and Agency policies. Agreements with delegated agencies to provide complete, accurate, and timely data should be incorporated in documents such as memorandum of understanding (MOU), State Enforcement Agreements (SEAs), Performance Partnership Agreements (PPAs)/ Performance Partnership Grants (PPGs) or Section 105 grant agreements. Such complete, accurate, timely data is a critical component of effective transparency.
- Work with EPA Headquarters to ensure that when delegated agencies use the flexibilities offered in the CMS to tailor their strategy to state/local specific circumstances, such use of flexibility is taken into account to accurately represent delegated agency performance in program reviews and to the public.
- Work with EPA Headquarters to modernize the Air Facilities System (AFS).

Acid Rain: Given tight budgets, EPA is looking for efficiencies in areas of the air program, such as the area of acid rain. Sources of acid rain consistently have high compliance rates because nearly all sources have a Continuous Emissions Monitor (CEM) system that must be used and their sulfur dioxide allowances are tracked in a national database. The use of CEMs, transparency, and the continued and robust enforcement of the Clean Air Act's New Source Review requirements have resulted in strong compliance performance. In addition, the pollutants covered by the acid rain program are also addressed by other EPA programs. In light of these factors, EPA's enforcement

program is able to shift to a limited national presence in this area and focus its specific acid rain resources on other high priority work⁹.

Stratospheric Ozone: Through a multitude of innovative and flexible regulatory approaches and voluntary programs, the Agency continues to meet its responsibility for protecting the stratospheric ozone layer. For example, the Office of Air and Radiation (OAR) implements regulatory programs to phase out the production and import of ozone-depleting substances (ODS) in the U.S. and guides the transition to safer substitutes while assuring U.S. compliance with treaty obligations under the Montreal Protocol. OAR also has several voluntary partnerships to encourage superior performance, such as “Green Chill,” a partnership with those grocery store chains that want to improve their environmental performance, while saving money by reducing leaks of ozone and climate-damaging refrigerants. The effectiveness of these programs allows the enforcement program to reduce enforcement resources in this area to a limited national presence, and to focus on responding to the most serious violations in this program (e.g., illegal importation of ODS). Through regulatory and voluntary efforts as well as international engagement, education, and outreach, the Agency will continue to make significant strides to protect the ozone layer, reduce emissions of high global warming potential gases, and protect people’s health.¹⁰

Asbestos NESHAPs: The Clean Air Act (CAA) National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos specifies work practices to be followed during demolitions and renovations of asbestos-containing structures, installations, and buildings (excluding residential buildings that have four or fewer dwelling units). Building owners and/or contractors are required to notify applicable State and local agencies and/or EPA Regional Offices before demolitions or renovations of buildings that contain a certain threshold amount of asbestos. EPA and states conduct inspections as needed, take enforcement actions when violations of notification or work practices are identified, and make Applicability Determinations (AD) under the regulations.

In light of budget constraints expected in FY13, EPA will maintain a limited national presence for asbestos NESHAP enforcement, with a focus on high-priority federal activities such as assessing, advising, and supporting state and local emergency response and recovery after catastrophic situations (e.g., earthquakes, hurricanes, and tornadoes) where structures with asbestos containing materials have been destroyed and normal procedures for abating asbestos before demolition are not feasible. Headquarters’ development of new regulatory applicability determinations will be limited to requests that pose issues of first impression that are of national importance. Criminal enforcement will continue to be a viable and robust tool to address criminal violations of the Asbestos NESHAP regulations. Delegated state programs will continue to conduct the day-to-day activities associated with the receipt of notifications and related compliance monitoring and enforcement activities.¹¹

⁹ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

¹⁰ See previous footnote.

¹¹ See previous footnote.

Wood Heater Program: New regulatory approaches being proposed provide opportunities for EPA to utilize its resources more effectively in monitoring and enforcement. EPA's Office of Air and Radiation is proposing changes to the New Source Performance Standards (NSPS) for residential wood heaters. The proposed rule will reflect significant advancements in wood heater technologies and design that limit particulate matter emissions. The proposed revisions are expected to require manufacturers to use third-party laboratories to review certification reports and submit compliance paperwork electronically. The proposal will also consider Agency coordination of compliance, monitoring, and enforcement activities with State and local governments. EPA will maintain a limited national role, focused on managing the certification process and conducting limited compliance and enforcement activities. Resource savings will be directed to other high-priority enforcement work. This approach is possible because of the substantial emission reductions achieved by the manufacturers of wood heaters and the anticipated streamlining of the NSPS' compliance, monitoring, and enforcement activities.¹²

6. *Relevant Policies and Guidance*

Additional information about OECA's CAA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/caa/index.html>

<http://www.epa.gov/compliance/civil/caa/index.html>

List of relevant CAA policies and guidance:

- The Air Facility System Business Rules Compendium
www.epa.gov/compliance/resources/policies/data/systems/air/afsbusinessrulescompendium.pdf
- The Air Facility System Minimum Data Requirements
www.epa.gov/compliance/resources/publications/data/systems/air/mdrshort.pdf
- CAA Stationary Source Compliance Monitoring Strategy
www.epa.gov/compliance/resources/policies/monitoring/cmstrategy.pdf
- CAA National Stack Testing Guidance
www.epa.gov/compliance/resources/policies/monitoring/caa/stacktesting.pdf
- Area Source Rule Implementation Guidance
<http://www.epa.gov/compliance/resources/policies/monitoring/caa/areasource.pdf>
- The Timely and Appropriate Enforcement Response to High Priority Violations
www.epa.gov/compliance/resources/policies/civil/caa/stationary/issue-ta-rpt.pdf
- The Timely and Appropriate Enforcement Response to High Priority Violations Workbook
www.epa.gov/compliance/resources/policies/civil/caa/stationary/hpvmanualrevised.pdf
- CAA Stationary Source Civil Penalty Policy
www.epa.gov/compliance/resources/policies/civil/caa/stationary/penpol.pdf
- CAA Section 112(r) Combined Enforcement Policy
<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/caa112r-enfpol.pdf>
- Guidance for Conducting Risk Management Program Inspections under Clean Air Act Section 112(r)
www.epa.gov/oem/docs/chem/audit_gd.pdf
- Civil Penalty Policies <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>

¹² Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

SECTION IV: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM WATER POLLUTION

A. Clean Water Act (CWA)

OECA addresses water pollution problems resulting from noncompliance with our nation's environmental statutes and regulations, including the following CWA programs:

- National Pollutant Discharge Elimination System (NPDES) Program (including general and individual permits from sources such as municipal and industrial wastewater treatment facilities and their collection systems, concentrated animal feeding operations (CAFOs), industrial stormwater, and vessels).
- Pretreatment Program
- Biosolids/Sludge Program
- CWA Section 404 (Wetlands) Program
- CWA Section 311 (Oil Pollution Act, including the Spill Prevention Control and Countermeasures (SPCC) Program)

1. Clean Water Act Action Plan

OECA, together with EPA Regions, states and tribes with program delegation, and the Office of Water, continues to implement the CWA Action Plan ("the Action Plan") issued in October 2009. Pursuant to the Action Decision Document, issued in May 2011, EPA is making four fundamental changes to revamp the NPDES permitting, compliance and enforcement program to better address today's serious water quality problems:

1. Switch from existing paper reporting to electronic reporting, resulting in increased efficiency and improved transparency of the NPDES program.
2. Use "Next Generation Compliance" approaches to create a new paradigm in which regulations and permits compel compliance via public accountability, self-monitoring, self-certification, electronic reporting and other methods.
3. Address the most serious water pollution problems by fundamentally re-tooling key NPDES permitting and enforcement practices, while continuing to vigorously enforce against serious violators.
4. Conduct comprehensive and coordinated permitting, compliance, and enforcement programs to improve state and EPA performance in protecting and improving water quality.

These elements are consistent with the Assistant Administrator's goals for the compliance and enforcement program, listed on pages 6-7 of this Guidance.

Regions and authorized states should participate in workgroups tasked with designing and implementing these changes as well as use the new tools, policies and regulations as appropriate.

For FY2013, Regions should participate in the following CWA Action Plan efforts:

1. In preparation for implementing the proposed NPDES Electronic Reporting Rule, the Regions must:
 - a. Ensure states not already migrated to ICIS-NPDES meet all milestones and schedules for migrating by end of first quarter FY2013.
 - b. Actively market and implement the use of NetDMR by permittees for the electronic transfer of Discharge Monitoring Reports (DMR) to ICIS-NPDES, supported by the National Environmental Information Exchange Network (Exchange Network). The Regions should also begin implementing OECA's new electronic Notice of Intent (eNOI) tool which is planned to be completed by the end of first quarter FY2013 contingent on FY2012 funding;
 - c. Ensure their states are preparing for the implementation of the electronic reporting rule by adopting the use of EPA electronic reporting tools (NetDMR, eNOI), or developing their own state e-reporting tools. The plan is to have the first reporting under the NPDES Electronic Reporting Rule begin January 2014.
 - d. Work closely with the Office of Compliance to individually evaluate their states readiness to implement the electronic reporting rule, including:
 - i. CROMERR-compliant electronic reporting tools;
 - ii. State system readiness; and
 - iii. Level of participation using the state e-reporting tools (i.e., 90% participation by NPDES-regulated facilities).
2. Where appropriate, and in accordance with any subsequent guidance, enforcement actions should require electronic reporting, as appropriate, for all data required by the enforcement actions.
3. Where appropriate, and in accordance with any subsequent guidance, compliance and enforcement personnel should provide relevant feedback to permitting offices regarding permit prioritization and modifications to consider when new permits are developed or a permit is renewed. Permit writers should consider comments provided by inspectors and/or enforcement personnel in developing appropriate permit conditions.
4. Where the Regions have direct implementation responsibilities, and where data can be made available, utilize multi-sector general permit (MSGP) violation and benchmark data to support monitoring, targeting and enforcement.
5. Actively participate in CWA Action Plan projects including those to address effluent violations reported on Discharge Monitoring Reports (DMRs) using new strategies and tools, such as expedited administrative enforcement actions and electronic compliance assistance. Consider innovative approaches to deal with more routine paperwork violations.
6. Designated regional and HQ managers and staff should use the results of the 2012 enforcement management system (EMS) gap analysis, consider input obtained from the states, and help to draft new approaches for a revised CWA/NPDES EMS framework that supports the principles described in the 2009 CWA Action Plan. This framework will supersede the existing CWA/NPDES EMS that is used to prioritize violations for

appropriate enforcement responses. Full implementation of the NPDES electronic reporting rule will be a key pre-requisite to implementing the new EMS.

7. Regions should broaden the scope of targeting, monitoring, enforcement and state oversight beyond traditional NPDES majors. New targeting tools, such as the DMR Pollutant Loading Tool, can be used to determine the source, location and amount of discharged pollutants. It includes a subset of non-major facilities, and can be found at:
www.epa.gov/pollutantdischarges.

2. Implement National Enforcement Initiatives

Implementation strategies have been developed for the National Enforcement Initiatives that include final goals and measures, and guidance on implementation. Region-specific commitments for activities to support the goals and measures are negotiated through the ACS process.

The FY 2011 – 2013 national enforcement initiatives for CWA programs are:

Keeping Raw Sewage and Contaminated Stormwater Out of Our Nation's Waters: EPA will continue its enforcement focus on reducing discharges of raw sewage and contaminated stormwater into our nation's rivers, streams and lakes. Older urban areas with aging sewer systems are problematic because these systems were not designed to handle heavy rainfall and snowfall, nor can they handle the added burden of growing urban populations and industrial discharges. As a result, untreated sewage may overflow from sewers into waterways, or back up into city streets or basements of homes. Raw sewage contains pathogens that threaten public health, leading to beach closures and public advisories against fishing and swimming. This problem particularly affects older urban areas, where minority and low income communities are often concentrated. In addition, stormwater runoff from urban streets and construction sites carries sediment, metal, oil and grease, acid, chemicals, toxic materials and industrial waste into surface waters. Many cities use rivers as the source of their drinking water, and contaminants in the water increase the difficulty and expense of treating the water for drinking water use.

The CWA requires municipalities to treat sewage before it is discharged and to control contaminated stormwater discharges, but many municipalities are not complying with these requirements. EPA's enforcement efforts in recent years have resulted in agreements by many cities to remedy these problems, but the problem remains in many other cities. In FY2011-2013, this National Enforcement Initiative focuses on reducing discharges from combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), and municipal separate storm sewer systems (MS4s) by obtaining cities' commitments to implement timely, affordable solutions to these problems, including increased use of green infrastructure and other innovative approaches. EPA is committed to working with communities to incorporate green infrastructure, such as green roofs, rain gardens, and permeable pavement, into permitting and enforcement actions to reduce stormwater pollution and sewer overflows. Regions should consider and promote the opportunity to utilize green infrastructure controls in municipal enforcement actions. Green infrastructure approaches have the potential to help reduce and/or eliminate CSOs and SSOs in a cost effective manner while providing a variety of environmental and community benefits, including improved water and air quality, increased energy efficiency, green spaces and economic development. For these reasons, EPA is committed to the incorporation of green infrastructure projects into municipal settlements where

appropriate. Information on green infrastructure projects can be found at: http://cfpub.epa.gov/npdes/home.cfm?program_id=298. Regions should also implement the Integrated Municipal Planning Approach (<http://cfpub.epa.gov/npdes/integrationplans.cfm>) to address municipalities' numerous CWA obligations related to their municipal sewer system infrastructure. EPA engaged stakeholders to develop and implement an Integrated Municipal Planning Approach to address municipalities' numerous CWA obligations related to their municipal sewer system infrastructure. This approach will allow municipalities to prioritize CWA requirements in a manner that addresses the most pressing public health and environmental protection issues first, while maintaining existing regulatory standards that protect public health and water quality. All or part of an integrated plan may be able to be incorporated into the remedy of enforcement actions. After the details of the development and implementation of the Approach are finalized (anticipated by Spring 2012), OECA will decide what modifications to the National Municipal Enforcement Initiative Strategy are necessary to implement this Approach. More detail about the changes and their implications will be made available after it is finalized. More information can be found at: http://www.epa.gov/npdes/pubs/integrated_planning_framework%20draft.pdf

Preventing Animal Waste from Contaminating Surface and Ground Waters: Concentrated animal feeding operations (CAFOs) are a subset of livestock and poultry animal feeding operations (AFOs) that meet the regulatory thresholds of number of animals for various animal types. Animals are kept and raised in confined situations for a total of 45 days or more in any 12-month period and feed is brought to the animals rather than the animals grazing or otherwise feeding in pastures, fields, or on rangeland. At these facilities, live animals as well as mortalities, feed, and animal wastes may be congregated on a small land area. These operations generate significant volumes of animal waste which, if improperly managed, can result in environmental and human health risks such as water quality impairment, fish kills, algal blooms, contamination of drinking water sources, and transmission of disease-causing bacteria and parasites associated with food and waterborne diseases. EPA's goal is to take action to reduce animal waste pollution from livestock and poultry operations that impair our nation's waters, threaten drinking water sources, and adversely impact vulnerable communities. EPA's regulations require permit coverage for any large CAFO that discharges manure, litter, or process wastewater into waters of the U.S. CAFOs that discharge but do not have NPDES permits are in violation of the CWA. EPA will continue to focus enforcement investigations on these facilities, particularly in priority areas. For FY2013, OECA and the Regions will focus primarily on existing large and medium CAFOs identified as discharging without a permit to waters of the U.S. In addition, some resources will be used to assure that CAFOs that already have permits are in compliance with those permits. Each Region, coordinating with their states where appropriate, will consider a variety of factors to prioritize its CAFO activities. These factors include, but are not limited to, identifying watersheds or water bodies where CAFOs are negatively affecting water quality, proximity of CAFOs to drinking water sources and vulnerable communities, and status of authorized state CAFO programs.

Assuring Energy Extraction Sector Compliance with Environmental Laws: As the nation expands its search for new forms and sources of energy, there is an urgent need to assure that we develop "clean energy" sources that protect our air, water and land. Some energy extraction activities, such as new techniques for gas extraction, pose a risk of pollution of air, surface waters, and ground waters if not properly controlled. Drilling and hydraulic fracturing ("fracking")

activities have led to concerns about ground water pollution and the safety of drinking water supplies in many parts of the country. Of particular concern are current practices in the industry to discharge or haul processed wastewaters to Publicly Owned Treatment Works (POTWs) or centralized waste treaters who may not have controls in place to effectively treat these wastewaters. Concerns also exist about potential to contaminate drinking water sources. As part of OECA's energy extraction enforcement initiative, EPA is utilizing a range of its authorities, including the Clean Water Act and the Clean Air Act, to address non-compliance from natural gas extraction and production activities that may cause or contribute to adverse public health impacts.

3. Link with Top Office of Water Priorities

OECA addresses top Office of Water priorities for the CWA in the following ways:

- Restoring and Protecting Urban Waters: As part of aggressively going after pollution that matters to communities and working toward environmental justice, OECA's enforcement and compliance efforts will be particularly focused on protecting communities, especially underserved or economically distressed communities, by getting raw sewage out of the water, cutting pollution from animal waste, and reducing polluted stormwater runoff. See <http://www.epa.gov/urbanwaters>.
- Strengthening Protections for Our Waters: OECA is improving protection of water through the CWA Action Plan (<http://www.epa.gov/compliance/civil/cwa/cwaenfplan.html>). See section A.1.
- Chesapeake Bay: Regions 2, 3, 4 and 5 should refer to the Chesapeake Bay Compliance and Enforcement Strategy implementation plans for details about expectations and commitments for stormwater, wastewater, CAFOs and air deposition. Implementation plans include goals and measures with targets for accomplishing activities to support each, *e.g.*, three MS4 audits per year. Relevant information related to compliance and enforcement is posted at: <http://www.epa.gov/compliance/civil/initiatives/chesapeakebay.html#watershed>.

4. Aggressively Go After Pollution Problems That Make a Difference in Communities

Communities across the country depend on clean water as a source of drinking water, a habitat to support healthy ecosystems and as a resource for recreation and fishing. They expect protection from exposure to water contaminated by raw sewage, animal waste and pollutants in urban stormwater run-off.

Direct exposure to raw sewage and associated high levels of disease-causing organisms can be a particular problem for communities located in older urban areas where the aging municipal wastewater infrastructure may be failing or unable to handle the demands of a growing urban population. When pipes break, equipment fails or the system exceeds capacity, untreated wastewater flows into waterways, homes and city streets, most significantly exposing the community to pathogens. Urban water bodies can also be assaulted by large volumes of uncontrolled polluted stormwater from streets, parking lots, and commercial and industrial businesses. Many of these older urban areas include minority and low income communities.

Exposure to animal waste from CAFOs may particularly affect low income and minority populations in rural areas. Water bodies polluted by the waste can cause human illness after swimming or wading and result in contaminated fish and shellfish. This is a particular problem with respect to subsistence fishing, which is most frequent in minority and low income populations.

OECA, together with the Office of Water and authorized state and tribal water control agencies will work to identify at-risk waters and use appropriate regulatory tools, including setting strong water quality standards, issuing protective and enforceable NPDES permits and addressing serious violations through effective enforcement, to ensure water quality protection and restoration.

A. CWA NPDES Program

Regions with non-authorized states and Indian country, and authorized states and tribes, should:

- Target to identify serious sources of pollution and serious violations. Use the new tools developed pursuant to the CWA Action Plan, such as available ambient monitoring data, the Discharge Monitoring Report (DMR) Pollutant Loading Tool (<http://cfpub.epa.gov/dmr/>), and other GIS resources, to target the most significant sources of pollutants on those water bodies and watersheds. Priority should be given to water bodies that are not meeting water quality standards and that have disproportionate impacts on individual communities.
- Utilize the *Inspection Targeting Model* for the CWA, as appropriate, and provide feedback to OECA. The model includes “Is the facility or outfall within 15 miles upstream of a drinking water intake?” as part of its indexing. This model can be accessed through OTIS (www.epa-otis.gov/otis/itm).
- Develop annual compliance monitoring plans that take advantage of the flexibility available in the National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources (issued October 17, 2007, hereafter “NPDES CMS”). Target inspections to identify and address serious water quality problems where NPDES compliance and enforcement tools will be effective in addressing the pollution problem. In 2012, EPA updated the Inspection Targeting Model with annual estimates of pollutant discharge amounts to allow users to sort on the facilities with the largest pollutant loads and largest pollutant load over limits. In FY 2013, EPA Regions and states should be using the model as a tool for targeting the most serious water quality problems.
- Participate with authorized agencies in a national dialogue on what activities count as “compliance monitoring” under the 2007 NPDES CMS. Traditionally, on-site inspections and investigations have been the primary means for providing coverage of the regulated universe. The rapidly expanding universe of NPDES regulated sources has outpaced our ability to conduct on-site inspections at all permittees. The Regions and authorized agencies need to use their resources in a way that maximizes the reach of their compliance monitoring activities. Out of the national dialogue on compliance monitoring, in 2012 OECA expects to issue additional guidance that Regions and states will begin to use in FY 2013 on the parameters for conducting periodic “off-site” evaluations of permittee compliance. Any off-site evaluations that are counted under the CMS will need to be sufficient to ascertain permittee compliance, be well documented and reported to a national data system. The guidance on off-site evaluations may cover things such as CWA Section 308 Information Requests, subpoenas, review of a year’s worth of DMRs coupled with information provided

by the permittee on calibration of discharge monitoring equipment and ambient sampling. In addition, starting in 2012 and continuing in 2013. OECA will be conducting a study to evaluate whether the CMS is achieving the desired results and whether any adjustments are needed.

- Ensure that all available data regarding violations are evaluated to determine the seriousness of the violation and the appropriate response. Facilities in significant noncompliance (SNC) should be considered for appropriate follow-up action, along with point sources with serious effluent limit violations, unpermitted discharges, systemic reporting problems or violations at facilities with potential to seriously impact water quality. Ensure that civil enforcement actions, where appropriate, are taken to address serious violations contributing to a community's water quality problems. Ensure compliance with federal consent decrees and administrative orders where appropriate. Implement targeted "real time" (quick response) enforcement activities to address CWA violations impacting communities' waters, such as violations at concentrated animal feeding operations.

In addition, Regions should:

- Implement CWA specific geographic compliance and enforcement strategies, as appropriate for their Region, including CWA Action Plan projects, the Chesapeake Bay Compliance and Enforcement Strategy, and other region-specific geographic initiatives.
- Routinely review all DMRs and non-compliance reports received for compliance with permit requirements where the Region directly implements the program, including in Indian Country. (Note that Regions may accomplish this review through a routine screen of the PCS or Integrated Compliance Information System ICIS-NPDES data and reviewing the DMRs themselves as necessary.)
- Evaluate the effectiveness of the approval authority's pretreatment program by inspecting and auditing pretreatment POTWs. In conjunction with POTW inspections, Regions and states should ensure that POTWs with control authority are carrying out their responsibilities, including annual inspections of Significant Industrial Users (SIUs). Where states are the control authority, Regions should assess each state program's performance in conducting annual inspections of Significant Industrial Users (SIUs).
- Regional audits or inspections should be conducted in accordance with the NPDES CMS and can be conducted in conjunction with other compliance inspections at major and minor POTWs, such as compliance evaluations (CEIs), or separately. For Industrial Users (IUs) in non-authorized states that discharge into POTWs without approved pretreatment programs, the Regions will inspect the IUs in accordance with the NPDES CMS.
- All states now have their own safety program for biosolids, and there are also third party verification programs that support compliance in this area. In light of these facts, and the scientific studies indicating that biosolids present a lower risk than other substances, EPA expects to reduce investment in this area to support other high priority enforcement work. To monitor this area, EPA plans to rely on straightforward performance standards, recordkeeping, and reporting requirements that, once EPA's NPDES e-reporting rule is fully implemented, will provide for increased transparency and accountability with regard to this

sewage sludge. EPA will maintain a limited national enforcement capacity in this area to respond to national priority work that may arise in this program.¹³

- Use all available data to benchmark and monitor state performance using data from federal and state data systems, permitting and enforcement performance reviews, and other audit or evaluation reports. These include State Review Framework reviews, Office of Water Permit Quality Reviews, MOA reviews, regular EPA/state meetings to review performance, data not entered into national databases and Government Accountability Office (GAO) and/or Inspector General (IG) reviews of state performance. In FY2013, EPA will implement an integrated and streamlined NPDES enforcement and permitting oversight review process, including guidance and training for EPA Regions and states.
- Where authorized states have exhibited a widespread and long-standing problem with significant aspects of their permitting or enforcement programs, Regions should object to permits or take direct enforcement actions in those states in accordance with EPA's June 22, 2010 Memorandum titled, "Interim Guidance to Strengthen Performance in the NPDES Program." Regions should focus oversight resources on the most pressing performance problems in states. Regions and states must work together to demonstrably improve state performance.
- Regions should investigate the CWA compliance status of surface mining facilities within each Region, including mountaintop removal mining operations. Regions should evaluate the compliance status of such facilities with respect to both NPDES permitting requirements and CWA section 404 permitting requirements. If CWA violations are identified, enforcement action should be taken where appropriate.
- HQ, and Regions as necessary, will coordinate with Coast Guard in implementing the Vessel General Permit MOU and review of Coast Guard deficiency data. Regions will coordinate as necessary with Coast Guard sector offices on conducting joint inspections with Coast Guard.
- Continue implementing the Federal Facility Integrated Strategy on Stormwater.
- Work with states that are currently using the NPDES Permit Compliance System (PCS) to prepare to migrate to the modernized data system, ICIS-NPDES by the end of the first quarter of FY 2013. On March 24, 2011, EPA Deputy Administrator Bob Perciasepe issued a memorandum in which he affirmed his support for using the National Environmental Information Exchange Network (Exchange Network) as the preferred means of environmental data sharing between EPA, states, tribes, and others. Also, this memorandum affirmed the unanimous ECOS resolution calling for full implementation of the Exchange Network, and represented a renewed joint commitment to success of the Network. The Office of Enforcement and Compliance Assurance supports this goal. Regions must work closely with the Office of Compliance to evaluate their states remaining in PCS on their readiness to migrate, and what assistance is needed for the migration, if any. PCS will be turned off by the third quarter of FY 2013.
- Regions should support the Agency's Next Generation Compliance by promoting electronic monitoring and reporting to improve targeting and transparency as well as by advancing new monitoring technologies to enhance the ability to identify violations impacting public health and harming the environment. For example, for consent decrees that include a requirement

¹³ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

to conduct sampling or to report, Regions should seek to obtain electronic reporting to ICIS-NPDES.

COMMITMENT CWA07: By December 31, 2012, provide to Headquarters a specific NPDES Compliance Monitoring Strategy (CMS) plan for each authorized state in the Region, targeting the most significant sources with potential to impact water quality. The plan should provide universe information for the CMS categories; sub-categories covered by the CMS and combined EPA and state expected accomplishments for each category and subcategory. The plan should identify trade-offs made among the categories utilizing the flexibilities in the 2007 NPDES CMS policy and any amendments or further guidance as a result of the national dialogue on expanding the range of activities to be counted as compliance monitoring under the NPDES CMS. At the end of the year, provide for each state a numerical report on EPA and state inspection plan outputs, by category and subcategory. To increase the transparency of NPDES inspection data, OECA will work with EPA Regions and state associations to develop formats for releasing inspection data on CMS implementation performance on a state-by-state basis.

B. CWA Section 404 – Discharge of Dredge and Fill material

Regions should:

- Coordinate, as appropriate, with other federal agencies (e.g., U.S. Army Corps of Engineers, Natural Resources Conservation Service (NRCS), and Fish and Wildlife Service) which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement or other appropriate mechanisms.
- Meet with Corps Districts on an annual basis to establish regional priorities and communicate priorities to OECA.
- Review field level agreements with Corps Districts, and revise to make them consistent with Section 404 Enforcement Strategy, as appropriate.
- Regions should utilize the Office of Water's DARTER (Data on Aquatic Resources Tracking for Effective Regulation) system as well ICIS (Integrated Compliance Information System) in their targeting efforts to identify potential repeat and flagrant violators (ICIS continues to be the data base of record for tracking EPA information on CWA section 404 enforcement actions).
- Develop methods to effectively leverage other program resources to more systematically identify potential serious Section 404 violations and take appropriate enforcement response to address these violations. Share effective techniques with OECA for use in developing the national wetlands enforcement strategy.
- Utilize existing regional cross training opportunities as well as opportunities identified by OECA to cross-train inspectors and to train other federal and state agencies and stakeholders to identify CWA section 404 violations.
- The Section 404 Enforcement Strategy was piloted during FY 2011 - 2012, and the Regions are expected to work with OECA in implementing the strategy in 2013.

C. CWA Section 311 – Oil Pollution Act

Regions should:

- Participate in multi-regional judicial enforcement cases to address spills from inter-state pipelines and others, such as production facilities, on a company-wide basis. Cases should include company-wide injunctive relief requirements to prevent future spill violations at all facilities of the owner or operator.
- Participate in multi-regional judicial enforcement cases to address facility response plan (FRP) violations at facilities owned or operated by the same company. Cases should include company-wide injunctive relief requirements to improve facility response planning and implementation at all facilities of the owner or operator.
- Investigate and develop informal (e.g. warning letters, notices, etc.), administrative (e.g. Class I or Class II penalties, orders, information requests, etc.) and judicial (e.g. complaints or consent decrees in federal court) enforcement actions to address noncompliance with EPA Product Schedule Requirements for use of dispersants and other substances.
- Investigate, target and develop informal (e.g. warning letters, notices, etc.), administrative (e.g. Class I or Class II penalties, orders, information requests, etc.) and judicial (e.g. complaints or consent decrees in federal court) enforcement actions to address spill prevention, and facility response planning violations at facilities subject to EPA regulations, including offshore platforms within EPA jurisdiction. Also investigate, target, and develop informal, administrative and judicial enforcement actions to address discharge violations (spills) wherever the violation occurs, whether or not the spill occurred at a facility subject to EPA's spill prevention or facility response planning regulations.
- When appropriate, in the context of an enforcement action or enforcement targeting effort, conduct inspections and enforcement investigations as needed to confirm violations or develop enforcement cases. These activities are intended to be conducted by enforcement staff or contractors, when needed for enforcement targeting or case development.
- Conduct enforcement investigations to identify noncompliance, target appropriately for enforcement response, and build cases for enforcement actions. Enforcement investigations could include use of CWA Section 308 and/or 311(m) information requests, independent audits, interviews, review of inspection reports, coordination with state and other federal agencies, use of public tips and complaints, review of public databases, or other investigative means. Whenever spill or regulatory enforcement is pursued at facilities subject to EPA regulations, the case development staff should evaluate whether the facility is in compliance with all spill prevention and facility response plan requirements and should include claims in the enforcement case to address all noncompliance in these areas.
- As part of enforcement targeting work, review spill notification reports to the National Response Center, pipeline spill reports to the Pipeline and Hazardous Materials Safety Administration, spills reported to states and other available sources to identify spill violations. Issue CWA 308 information requests to confirm violations and identify causes of the spills. Take appropriate enforcement action to address spills of oil and hazardous substances that have occurred, to include penalties and injunctive relief to prevent future violations from similar causes across all facilities of the same owner or operator.
- Participate in OECA-led coordination and strategy meetings, as appropriate.
- Where opportunities exist, coordinate with OECA and OEM to provide outreach and assistance to the agricultural sector on Spill Prevention, Control, and Countermeasure (SPCC) rule that will be required to come into compliance in 2013.

5. *Reset Our Relationships with States and Tribes*

Regions should:

- Work with authorized states to conduct a CWA annual planning process that brings the different components of the regional and state NPDES program (water quality standards and assessment, permitting and enforcement) to the table together, identifies and discusses shared goals and national, regional, and state priorities versus available resources at both the state and federal levels, and results in collaborative annual work plans that use all available mechanisms to get work done, such as federal and state work-sharing, innovative approaches to monitoring facilities or addressing violations.
- Convene routine and regular meetings between the EPA region and authorized state to discuss progress towards meeting annual permitting and enforcement commitments, and how the state has been performing overall in the NPDES program.
- In instances where authorized states are not meeting performance expectations, EPA Regions should focus oversight resources to the most pressing performance problems in states and should work to demonstrably improve state performance. EPA Regions need to take action when necessary to communicate what things need attention to achieve the goals of the federal environmental laws and ensure a level playing field amongst authorized states.
- Conduct a sufficient number of oversight NPDES inspections to ensure the integrity and quality of each authorized state or tribe compliance monitoring programs. EPA Regions have flexibility to determine the appropriate number of oversight inspections needed to ensure proper state inspection conduct and documentation. Oversight inspections are not "joint" inspections. Oversight inspections can be conducted by accompanying state inspectors during inspections, or conducting a separate inspection at the same facility at a later date to verify the same findings.
- Implement Round 3 of the State Review Framework (SRF) for the NPDES program in conjunction with permit quality reviews and assure implementation associated with corrective actions identified in the SRF reports.
- When conducting state program oversight:
 - Ensure the full regulated universe of NPDES permittees is addressed in the state's CMS plan, focusing on the most important sources and most serious noncompliance;
 - Review the number of SNCs identified (and percent of universe), especially those related to effluent exceedance or illegal discharges by state and by region and the number (and percent) addressed in a timely and appropriate manner; and
 - Track and manage results of State Review Framework and Permit Quality Reviews and progress in correcting identified issues.
- Regional direct implementation in Indian country includes applying the various clean water compliance monitoring strategies, enforcement policies, and *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)*. *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* contains procedures for consultation with federally-recognized tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA's consideration of enforcement actions. The threshold criteria are not intended to, and should not, result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the U.S.

- Ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed per *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004).
- EPA Order 3510 requires that each EPA office which prints and distributes credentials (i.e. federal credentials issued to state and tribal inspectors to conduct inspections on behalf of EPA) conduct an annual inventory, including an annual physical possession check of 10% of the credentials.

6. Improve Transparency

- Data regarding state assessments, priorities and performance under the CWA should be made public by the Regions and Headquarters, where possible, on a regular basis in a manner easily understood and used by the public.
- If data systems are not able to support reporting at end-of-year FY 2013, the Regions should manually report using instructions specified in the multi-program fiscal year reporting guidance memorandum.
- Regions should work with the states and tribes to verify that their compliance and enforcement data is accurate and input into national databases.
- Compliance monitoring activities conducted pursuant to the goals in CMS and the state-specific plans should be reported into the appropriate national information system, either PCS or ICIS-NPDES, in accordance with documents which establish data requirements and reporting timeframes for those systems. States must ensure that all required compliance and enforcement data is input or transmitted to the national databases. States utilizing CMS flexibility should report on the commitments in their CMS plan. EPA encourages states to expand their use of the national databases to include compliance and enforcement data that pertains to the entire NPDES universe.
- Regions should review the oil and hazardous substance spills reported to the National Response Center (NRC) to ensure they are timely and accurately reported.
- Regions should make information available to communities, including tribal communities, who lack access to the internet.

7. Relevant Policies and Guidance

Additional information about OECA's CWA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/cwa/index.html>

<http://www.epa.gov/compliance/civil/cwa/index.html>

<http://cfpub.epa.gov/npdes/stormwater/munic.cfm>

B. Safe Drinking Water Act (SDWA)

OECA addresses drinking water pollution problems through the following SDWA programs:

- Public Water System Supervision (PWSS) Program;
- Underground Injection Control Program; and
- Working with Regions to address imminent and substantial endangerment circumstances under Section 1431 of the SDWA.

PWSS Program

EPA's focus on regulated drinking water systems, including those in Indian country, protects the public from the potential acute and chronic health effects of drinking water that fails to comply with the SDWA. The Enforcement Response Policy (ERP) establishes EPA's expectations of how primacy agencies are to address drinking water violations and protect public health by returning violating public water systems (PWSs) to compliance. Following the concepts of the ERP, the Enforcement Targeting Tool (ETT) generates a list of all PWS that have unresolved violations and identifies those systems that have the most serious, most numerous, and longest-lasting unresolved drinking water violations.

The ETT assigns to each drinking water violation a numerical point value weighted for its severity, and applies a formula that generates a total score for each PWS with unresolved violations. Because violations of health-based standards and major violations of monitoring and reporting requirements for acute contaminants present the most serious risks to the public's health, violations of these types are assigned the higher point values. Major monitoring and reporting violations related to chronic contaminants, minor monitoring and reporting violations, and public notification violations are assigned lower point values. Violations that have been returned to compliance or that are attached to an addressing formal enforcement action have a point value of zero. The higher a PWS's total ETT score, the more serious is its overall unresolved noncompliance.

The ERP provides that all drinking water violations at PWSs are to be resolved and that PWSs are to be returned to compliance. Additionally, the ERP directs that if a PWS reaches an ETT score of 11 or higher before its violations are resolved, that PWS will be considered a priority system that must, within six months of having reached a score of 11, either return to compliance or receive formal enforcement action that compels the system to return to compliance in a timely fashion. It is OECA's expectation that primacy agencies will simultaneously be working to reduce their backlog of systems that have already been at a score of 11 or higher for more than 6 months. Most primacy agencies (either EPA, states, tribes or territories) have markedly reduced their backlog of priority systems in the past years.

As a longer term goal, primacy agencies are encouraged to address violations at non-complying PWSs before they become priority systems. A quick response to SDWA violations decreases the risks to public health and allows primacy agencies flexibility to use a variety of tools such as assistance and informal enforcement actions as they work with PWSs to develop the technical, financial, and managerial capacity that will allow them to achieve sustained compliance. By focusing resources on PWSs in this way, the ERP helps ensure those PWSs return to compliance in a timely manner. This proactive approach is especially important in addressing violations at PWSs in Indian country, as it allows for timely notice to the tribe as soon as a violation is identified. The purpose of this contact is to discuss the system's options for returning to compliance and to ensure that the coordination and consultation encouraged by EPA's tribal policies occur on a schedule consistent with the ERP.

OECA strongly encourages primacy agencies to improve the completeness, accuracy, and timeliness of violation reporting and enforcement response data they report to the Safe Drinking

Water Information System (SDWIS)/FED. EPA is responsible for ensuring that primacy agencies fulfill the conditions of their primacy agreements, including fully reporting inventory, compliance and enforcement data to EPA. When primacy agencies do not properly report information in SDWIS, EPA cannot assure the integrity of the program or reliably report to the public, Congress and other oversight bodies. Inaccurate and incomplete data result in incorrect and inconsistent ETT scores within and across states. The Government Accountability Office (GAO) in FY2011 highlighted the seriousness of underreporting SDWA data and recommended action by EPA to improve the quality of data reported by states.

OECA is committed to partnering with OGWDW to improve the quality of data on PWSs in SDWIS, and asks regional enforcement staff and managers to work with their states to promote accurate, timely and complete reporting. As resources allow, HQ and the Regions will conduct file reviews of the compliance and enforcement data in SDWIS for their primacy agencies.

1. Link with Top Office of Water Priorities

OECA addresses top Office of Water priorities for the SDWA by supporting the core national program areas that are critical to ensuring safe drinking water. The areas where OECA provides support include:

- Development or revision of drinking water standards;
- Ensuring that states have the tools needed to begin implementing new rules as they take effect;
- Implementation of drinking water standards and technical assistance to water systems to enhance their technical, managerial, and financial capacity;
- Drinking Water State Revolving Fund; and
- Underground Injection control (UIC).

By participating on regulatory workgroups, OECA addresses enforcement and compliance issues in the early stages of the drinking water standards. In implementing the program, OECA and primacy agencies will work with the Office of Water in identifying systems that are not complying with the standards and may need technical assistance. Through cross-program collaboration in the areas like capacity development, operation certification, and sanitary surveys, the Office of Water and OECA can leverage available tools and resources to obtain safe water.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

The ETT and ERP apply equally to all public water systems in the U.S., regardless of the size or which agency implements the Safe Drinking Water program. EPA's goal is to ensure that all consumers receive equal protection of their drinking water.

OECA will continue to place emphasis on drinking water in schools and in Indian country.

In accordance with the ERP, all PWSs that reach a score of 11 or higher (priority systems) are to be addressed with a formal enforcement action or returned to compliance within six months of the quarterly ETT report on which the system first is reported as having a score of 11 or higher. OECA

headquarters will track primacy agency performance in meeting the timely and appropriate provisions of the ERP.

COMMITMENT SDWA02:

During FY 2013, the primacy agency must address with a formal enforcement action or return to compliance the number of priority systems equal to the number of its PWSs that have a score of 11 or higher on the July 2012 ETT report¹⁴.

State, territory and tribal breakouts shall be indicated in the comment field of the Annual Commitment System.

3. Reset Our Relationships with States and Tribes

Regions are responsible for working with states, territories, and tribes with primacy in an oversight capacity to ensure that the ETT is used and the ERP is implemented as intended. OECA and the Regions will regularly discuss progress returning systems to compliance, identifying those for which return to compliance is impracticable, and regional performance overall in implementation of the program. OECA will work with the primacy agencies on assessing data completeness based on violation data to determine if rules are being implemented in a timely manner.

The Regions will hold regular in-depth discussions with their states, territories, and tribes with primacy that include, but are not limited to, progress in returning systems to compliance, monitoring compliance progress on orders, number of systems addressed, number of systems in violation, consistency and appropriateness of compliance determinations and data quality, preparation for new rules, and overall performance in implementing the program. These meetings may be held in person or through conference calls or other venues, as appropriate. EPA strongly suggests a minimum of quarterly communication as a best practice for ensuring progress in meeting goals.

Where states and tribes with primacy are not meeting performance expectations established by this commitment or systems are in substantial noncompliance with state enforcement orders, Regions should take action to ensure the systems with the most serious violations are addressed or returned to compliance. Regions should focus oversight resources on the most pressing performance problems in states/territories/tribes with primacy and should work to improve performance through these actions. Also, EPA Order 3510 requires that each EPA office which prints and distributes credentials (i.e. federal credentials issued to state and tribal inspectors to conduct inspections on behalf of EPA) conduct an annual inventory, including an annual physical possession check of 10% of the credentials.

OECA will perform this oversight function with respect to direct implementation programs. OECA will engage with Regions on a regular basis to ensure that Regions are directly implementing the program in Indian country, Wyoming, and the District of Columbia effectively and are applying the ETT and ERP. Regional primacy (direct implementation) in Indian country includes applying the

¹⁴ A primacy agency's success at addressing violations will be tracked by means of the quarterly ETT reports. Numerical targets may be adjusted at mid-year. While it remains the ERP's goal that all of a priority system's violations will be returned to compliance, a primacy agency has met its commitment under the 2013 SDWA ACS with respect to a priority system if the score for that system has been brought below, and remains below, eleven.

various SDWA compliance monitoring strategies and enforcement policies, including the SDWA ERP and ETT, and *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (January 17, 2001). *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* contains procedures for consultation tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA's consideration of enforcement actions. The threshold criteria are not intended to, and should not result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the U.S.

4. Improve Transparency

OECA headquarters will continue its annual national report on PWS compliance and enforcement as required by the Safe Drinking Water Act, and on progress in returning systems to compliance. Past reports are posted on the EPA website at:

<http://cfpub.epa.gov/compliance/resources/reports/accomplishment/sdwa/>

Compliance and enforcement data for all drinking water systems will continue to be available to the public through the Enforcement and Compliance History Online website at <http://www.epa-otis.gov/echo/index.html>

Underground Injection Control (UIC) Program

EPA plans to focus UIC enforcement efforts on UIC violations that pose the greatest threat to health by adjusting our work on smaller and more routine UIC violations. Data generally shows good compliance at most facilities that EPA inspects, supporting a strategy of focusing our attention on the worst problems. This adjustment is not expected to affect compliance or enforcement activities where EPA directly implements the program, or UIC activities related to implementation of the Energy Extraction National Enforcement Initiative.¹⁵

5. Relevant Policies and Guidance

SDWA compliance and enforcement policies and guidance can be found at:

http://www.epa.gov/compliance/resources/policies/civil/sdwa/drinking_water_erp_2009.pdf

<http://water.epa.gov/lawsregs/guidance/sdwa/index.cfm>

<http://water.epa.gov/lawsregs/guidance/sdwa/wsg.cfm>

Information about EPA's tribal programs can be found at:

<http://www.epa.gov/tribal/laws/sdwa.htm>

<http://www.epa.gov/tribal/consultation/index.htm>

¹⁵ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

SECTION V: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM WASTE, TOXICS, AND PESTICIDES POLLUTION

A. Resource Conservation and Recovery Act (RCRA)

OECA's RCRA program addresses the management of solid and hazardous waste and underground storage tanks (UST). For more information on the management of hazardous waste under RCRA Subtitle C, readers are urged to review the RCRA Compliance Monitoring Strategy (CMS) which provides detailed information about goals and measures, policies which allow flexibility from OECA's expectations, program oversight, and other aspects of the RCRA compliance monitoring program.

1. Implement National Enforcement Initiatives

One of the Administrator's priorities is "cleaning up our communities" - using all the tools at our disposal, including enforcement and compliance efforts, to focus on making safer, healthier communities. The relevant FY 2011 – 2013 national enforcement initiative for RCRA program that supports this Agency priority is:

Reducing Pollution from Mineral Processing Operations

Mining and mineral processing facilities generate more toxic and hazardous waste than any other industrial sector, based on EPA's Toxic Release Inventory. Many of these facilities have impacted surrounding communities and continue to pose high risk to human health and the environment. For example, 95 mining and mineral processing sites are on the Superfund National Priorities List and more sites are being added every year, including operating facilities. EPA has spent over \$2.4 billion to address the human health and environmental threats to communities, such as exposure to asbestos and lead poisoning in children, as a result of mining and mineral processing. In some cases, EPA had to relocate families because of these threats, especially those to children in low income communities. EPA has inspected 65 mining and mineral processing sites that pose significant risk to communities and found many to be in serious non-compliance with hazardous waste and other environmental laws. Contamination of groundwater and potable water has occurred at many sites, sometimes requiring alternative drinking water supplies or removal of lead-contaminated soil from residential yards. In other cases, toxic spills into waterways from mining and mineral processing caused massive fish kills and impacted the livelihood of low income communities. Some workers at mining and mineral processing facilities have been exposed to spills and mismanagement of toxic and hazardous waste. EPA will continue its enforcement initiative to bring these facilities into compliance with the law and protect the environment and nearby communities.

Region-specific commitments for activities to support the goals and measures are negotiated through the ACS process. It is expected there will be approximately 12 mineral processing inspections required for 2013 nationally.

2. Statutory and Regulatory Requirements

RCRA dictates minimum inspection frequencies for treatment, storage, and disposal facilities (TSDF) - annually for TSDFs operated by state/local governments, and biennially for non-governmental TSDFs. RCRA01 and RCRA01.s apply to TSDFs owned or operated by non-governmental entities, and to TSDFs owned but not operated by state/local/tribal governments. RCRA03 applies to TSDFs operated by state/local/tribal governments. The inspections performed under these RCRA commitments should generally be Compliance Evaluation Inspections (CEIs). The RCRA CMS allows states (or Regions with direct implementation responsibility) to conduct Focused Compliance Inspections (FCIs) in lieu of CEIs at TSDFs if the states have approval from their Region (Regions with direct implementation responsibility should have approval from HQ) and the TSDF meets the established requirements (i.e., has been inspected at least two times and has no significant noncompliance).

COMMITMENT RCRA01: Project by state, and Indian Country where applicable, the number of operating non-governmental TSDFs, to be inspected by the Region during the year¹⁶. Regions must commit to inspect at least two (2) TSDFs in each state or Indian country unless OECA approves a deviation from this requirement. For example, deviations are given for states with small universes where it might not make sense for a Region to inspect two TSDFs per year. Financial responsibility is an important component of the RCRA core program and evaluating compliance with 40 CFR Parts 264/265 Subpart H should be included as part of the inspection of each TSDF (although such evaluations do not have to occur at the same time nor be conducted by the same people who conduct the field inspections). If a Region determines that there are unique circumstances in the Region or with a particular TSDF, the Region may contact Headquarters to discuss undertaking a detailed evaluation of compliance with 40 CFR Parts 264/265 Subpart H at another TSDF.

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

- Only one inspection per facility counts towards this coverage measure. The RCRA CMS establishes minimum annual inspection expectations for TSDFs: The inspections for RCRA01 and RCRA01.s should be CEIs. CEIs include evaluating compliance with the financial assurance requirements, 40 CFR Parts 264/265 Subpart H. Financial responsibility is an important component of the RCRA core program and should be included as part of the inspection of each TSDF (although the financial responsibility reviews do not have to occur at the same time nor be conducted by the same people who conduct the field inspections).

COMMITMENT RCRA03: Inspect each operating TSDF operated by states, local, or Tribal governments.

3. Link with Top OSWER Priorities

OECA addresses top OSWER priorities for RCRA in the following ways:

- Safe Waste Management and Clean Up, Recycling, and Resource Conservation: OECA maintains an overall enforcement presence in RCRA that supports OSWER programs and

¹⁶ Currently there is only one TSD in Indian country.

rulemaking efforts including those regarding CERCLA 108(b) and Cathode Ray Tubes (CRTs).

- Support continued progress towards the 2020 Corrective Action aspiration goals by targeting enforcement on facilities that have not made meaningful progress.
- Emergency Preparedness, Implementing the EPCRA, Response and Homeland Security: OECA maintains an overall enforcement presence in RCRA that supports OSWER programs.

4. Aggressively Go After Pollution Problems That Make a Difference in Communities

a. RCRA Subtitle C Hazardous Waste Program

Regions and states should inspect pollution problems that matter to communities, and develop enforcement cases that produce significant environmental benefits. Regions, in their oversight and direct implementation roles, including in Indian Country, and authorized states are expected to follow the guidance in the RCRA CMS. (EPA directly implements the RCRA program in Indian country in coordination with Tribes because RCRA precludes EPA from authorizing tribal programs.)

To enable states to monitor and identify environmental problems of concern to communities, states may utilize flexibility in the RCRA CMS to deviate from their large quantity generator (LQG) requirements. RCRA facilities may cause air, surface and groundwater pollution. Because these facilities are frequently associated with industrial operations, surrounding communities are often low income and minority. EPA may screen for potential environmental justice concerns at RCRA facilities by analyzing demographics and environmental factors.

Issues of emerging environmental concern to EPA and communities are listed here. These focus areas should be considered a high priority for Regions and states when developing strategies for targeting compliance assurance work. These should also specifically be discussed between authorized states and Regions when developing annual plans for respective activities in the Region. The areas of concern are:

- Surface Impoundments: EPA, with support from authorized states, continues to focus on problems associated with illegal disposal of hazardous waste in unlined surface impoundments. There are thousands of industrial surface impoundments across the country, many of which adversely impact communities through air, surface water, and/or groundwater contamination, particularly in the chemical manufacturing and petroleum refining sectors.
- Centralized Waste Treatment Facilities: These facilities conduct treatment of industrial solid waste from third-parties. Through recent inspections, EPA has identified several such facilities that were grossly mismanaging hazardous wastes, and treating and discharging these wastes without permits. This area of concern will include a focus on wastewater treatment units.

- Hazardous Waste Recycling Facilities: EPA supports the environmentally beneficial recycling of hazardous wastes and secondary materials. However, sham recycling and recycling not done in compliance with RCRA requirements can result in significant adverse impacts to human health and the environment. This area of concern will include a focus on zinc fertilizer manufacturing that uses hazardous waste in the production process.
- Coke Manufacturing: There are approximately 20 coke manufacturing facilities in the United States. EPA has recently inspected and identified multi-media compliance problems at some of these facilities, including the illegal land disposal of hazardous waste. This sector produces several listed and characteristic hazardous waste streams that are excluded from RCRA if recycled without being land disposed. EPA intends to conduct focused inspections within this sector to ensure compliance.
- Waste Analysis Plans at Commercial TSDFs: EPA has conducted sampling at TSDFs to determine if the facilities' waste analysis plans and treatment of the waste were adequate. Based on the results of the sampling, concerns have been identified with the treatment and stabilization techniques and the sampling and analysis of hazardous waste treated to meet the Land Disposal Restriction (LDR) treatment standards for land disposal.
- RCRA Corrective Action: To help achieve the RCRA Corrective Action 2020 Goals, EPA and authorized states should focus enforcement resources on facilities that have not made meaningful progress in achieving remedial objectives, and on financially marginal or bankrupt facilities. To ensure that meaningful cleanup progress is being made at all facilities subject to corrective action, Regions and authorized states should be monitoring compliance with orders and permits, identifying substantial noncompliance with such instruments, and taking enforcement actions where appropriate. When monitoring compliance with orders and permits, Regions should use electronic reporting tools whenever feasible.

The Regions should:

- Conduct compliance monitoring and pursue enforcement to ensure that pollution problems that matter to communities are aggressively addressed.
- Support, and encourage states to support, OC's RCRA inspector training development effort.
- Ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed per *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004). Enhance coordination in the RCRA program pursuant to the "Best Practices to Enhance Coordination in the RCRA Program."
- Conduct an annual inventory, including an annual physical possession check, of 10% of the credentials (i.e. federal credentials issued to state and tribal inspectors to conduct inspections on behalf of EPA) consistent with EPA Order 3510.

COMMITMENT RCRA02: Project by state and Indian Country, the number of LQGs, including those at federal facilities, to be inspected by the Region during the year. Each Region must commit to inspect at least six (6) LQGs in each state, and 20% of the region's LQGs universe in Indian Country, unless OECA approves a deviation from this requirement. For example, deviations are given for states with small universes where it doesn't make sense for a Region to inspect 6 LQGs per year or 20% of the Region's LQG universe in Indian country. Regions should select at least 2 of the Region's total LQG inspections at facilities described in the high priority section as areas of emerging environmental concern. Regions may work with OECA to coordinate these inspections, including whether the inspection will be conducted at a TSDF or LQG. In the Comment Section, provide the number of federal facility LQG inspections.

COMMITMENT RCRA02.s: Project by state the number of LQGs to be inspected by the state during the year. At least 20 percent of the LQG universe should be covered by combined federal and state inspections unless an alternative plan is approved under the RCRA CMS.

The RCRA corrective action financial responsibility measure may include the review of financial assurance instruments received by the states within each region. For those states that are not authorized for corrective action, the Regions should be reviewing the financial assurance instruments as part of EPA's role of implementing and enforcing the corrective action program in unauthorized states and Indian Country. Regions conducting financial assurance instrument reviews for the RCRA Subtitle C closure/post-closure regulatory program (under RCRA01) may also review any corresponding corrective action submissions as part of the completion of this program measure.

COMMITMENT OSRE04: Regions must commit to inspect at least one (1) RCRA corrective action financial assurance instrument per state, with at least 50% being financial test or corporate guarantee reviews. Where the submission is noncompliant, take appropriate enforcement action to address noncompliance (e.g., notice of violation). Or, where appropriate, work with the state to ensure appropriate action is taken to address noncompliance. If possible, return facility to compliance by end of fiscal year.

b. RCRA Underground Storage Tank (UST) Subtitle I Program

A major focus of the RCRA UST program is to maintain an enforcement presence concerning leak prevention, leak detection, corrective action, closure, and financial responsibility violations. Approved states have primary responsibility for determining facility compliance, ensuring adequate inspection coverage of the regulated universe, taking appropriate actions in response to non-compliance, and playing a vital role in alerting EPA to regulatory implementation problems.

EPA anticipates providing continued support for UST inspections. The Agency believes that it can refocus its UST enforcement efforts to address violations that pose the greatest threat to health, and where a federal response is necessary and shift away from enforcement work on more routine UST violations. EPA intends to maintain compliance monitoring and enforcement resources to directly implement the UST program in states and territories that do not have state program approval, where necessary, and in Indian Country. The enforcement program will also continue to support the Office of Underground Storage Tanks in promulgating any UST regulations and help develop

innovative approaches to promote and maintain compliance using next generation compliance and enforcement methods.¹⁷

Generally, EPA actions will complement and provide oversight of state activities. Remaining regional work will generally focus on enforcement and compliance activities as described below and will be consistent with the guidance under development for focusing work:

- UST inspections that will produce the greatest environmental and human health benefits (e.g., leak prevention, leak detection, corrective action, and financial responsibility). Factors to consider in identifying facilities for inspection under the UST program include:
 - Owners and operators of USTs located in Indian country;
 - Owners and operators with UST facilities in multiple states;
 - Mid-level distributors with multiple UST facilities;
 - Problem non-compliers; (i.e.; repeat violators; owners/operators who fail to cooperate in an effort to return to compliance);
 - Owners and operators of facilities with USTs that endanger sensitive ecosystems or sources of drinking water; and
 - Corporate, government-owned, and federal central fueling facilities.
- Take enforcement actions and assess penalties, as appropriate. Focus on developing large complex cases involving noncompliance on a corporate-wide basis or noncompliance in multi-state operations. Regions will consult with the states on use of the delivery prohibition, when appropriate, to address significant noncompliance. It is recognized that this tool may not be an option for states and tribes that do not have delivery prohibition programs or are not state authorized programs. Focus on developing large complex cases involving noncompliance on a corporate-wide basis or noncompliance in multi-state operations.

5. Reset Our Relationships with States and Tribes

RCRA compliance monitoring is a collaborative effort between OECA, Regions, and authorized or approved states. Each of these entities performs complementary but distinct roles. OECA provides national program leadership, and oversight of Regional and state programs, aimed at increasing program effectiveness and national consistency.

To the extent practicable, Regions and authorized or approved states should:

- Ensure the most serious environmental problems caused by noncompliance are addressed. Regions should accomplish this primarily through annual planning with states, state program oversight, strategic and targeted federal inspections and enforcement in states, and through direct implementation in Indian country. Regions provide capacity-building support to states

¹⁷ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

on complex or multi-state issues; and consult with states to identify compliance problems that may warrant areas of national focus. Regions should meet and consult regularly (for example, quarterly) with each authorized state to maintain communication on progress towards meeting annual permitting and enforcement commitments, enhancing program performance and ensuring fairness and a level playing field.

- Focus oversight resources on the most pressing performance problems in states and work to demonstrably improve state performance. Regions need to take enforcement action where states are not addressing serious violations to call attention to needed improvements in order to achieve the benefits of federal environmental laws and ensure a level playing field between states.
- States are encouraged to report to the Regions and OECA, any patterns of noncompliance they may identify through their inspections or other activities.
- Regional direct implementation in Indian country includes applying the various RCRA compliance monitoring strategies and enforcement policies and *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)*. *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* contains procedures for consultation with federally-recognized tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA's consideration of enforcement actions. The threshold criteria are not intended to, and should not, result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the U.S.
- Participate with authorized or approved states in a national dialogue to expand the range of compliance monitoring activities that may be counted under the RCRA compliance monitoring strategy. Traditionally, on-site compliance inspections and investigations have been the primary means for undertaking coverage of the regulated universe. However, as the regulated universe of sources continues to expand resulting in a significant challenge to our ability to conduct on-site evaluations, the Regions and authorized or approved states need to use available resources in the most effective manner.

RCRA Corrective Action

RCRA corrective action is implemented by EPA and 43 authorized states and territories. On April 27, 2010, OECA and OSWER jointly issued the "National Enforcement Strategy for Corrective Action" (NESCA). This strategy encourages EPA and states to continue to work in partnership to achieve the 2020 Corrective Action goals and emphasizes the need for close communication and coordination between EPA and states to meet this goal. Regions should be working closely with their state partners to implement NESCA. NESCA provides guidance to Regions and states for targeting enforcement efforts and to address special considerations that arise in the enforcement arena, such as ensuring enforceable requirements and deadlines in permits and orders are clearly identified, dealing with companies having financial difficulties, using CERCLA authorities, ensuring institutional controls are effective and enforceable and long-term stewardship requirements are met, and increasing the transparency and community involvement of enforcement efforts.

OECA will continue to provide training to both Regions and states on how to review financial test and corporate guarantee submissions for compliance. EPA and its state partners are currently in the process of assessing the contribution of NESCA in achieving progress toward the 2020 Corrective Action Goals.

Regions and authorized states should:

- Enhance coordination within your offices and among regulatory partners. Emphasize compliance monitoring, including ensuring that a compliance schedule is in place at all EPA-lead and state-lead facilities under a permit or order, determining whether noncompliance with cleanup milestones exists, and taking appropriate action in cases of noncompliance.

6. Improve Transparency

At the end of the fiscal year or when otherwise available, OECA will make essential information, such as the following, available to the public via OECA's web page, or by other means:

- Results of the State Review Framework;
- Results of the annual commitment reporting; and
- Highlights of significant EPA and state enforcement actions.
- Regions are expected to use their own comparable existing mechanisms to inform the public. States are encouraged to do likewise.
- Compliance data should distinguish state information from Indian Country information.
- Information should be made available to communities, including tribes, who lack access to the internet.

7. Relevant Policies and Guidance

Additional information about OECA's RCRA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/rcra/index.html>

<http://www.epa.gov/compliance/civil/rcra.html>

<http://www.epa.gov/compliance/cleanup>

B. Toxic Substances Control Act (TSCA)

The [Toxic Substances Control Act](#) provides EPA with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. TSCA also addresses the production, importation, use, and disposal of specific chemicals, including lead-based paint (LBP), formaldehyde, [polychlorinated biphenyls \(PCBs\)](#), and asbestos.

OECA addresses toxics problems through the following TSCA programs:

- Lead-based Paint Risk Reduction Program.
- New and Existing Chemicals Programs (TSCA Sections 4, 5, 6, 8, 12 and 13).
- Formaldehyde in composite board products (a new addition to TSCA).
- PCB Program.

- Asbestos Program, which includes the Worker Protection Standard, Model Accreditation Plan Program, and Asbestos Hazard Emergency Response Act (AHERA).

TSCA Compliance Monitoring Strategy

On September 16, 2011, the TSCA Compliance Monitoring Strategy (CMS) became effective. The CMS adopts a strategic “One-TSCA” program approach, which focuses TSCA resources on addressing the Region’s most significant TSCA challenges.

To help implement the One-TSCA approach, the TSCA ACS commitments will include a new commitment to report the Region’s other compliance monitoring activities beyond inspections and investigations (see the CMS for further details on compliance monitoring activities).

OECA will be holding a national dialogue on how to expand the range of compliance monitoring activities to be credited under media CMS. This is necessary as the regulated universe continues to grow while federal and state resources become more scarce. Traditionally, on-site compliance inspections and investigations have been the primary means for providing coverage of the regulated universe. There are many additional activities regulatory agencies do to monitor facility-level compliance that can and should be considered along with inspections and investigations as contributing to our coverage goals. EPA Regions, states and tribes should participate in this national dialogue in 2012, and be ready to implement the outcome of this discussion in 2013.

Consistent with EPA’s desire to better address large regulated universes (e.g., the vast universe subject to the LBP Renovation, Repair and Painting Rule [RRP Rule]) with approaches that go beyond traditional inspection and enforcement activities, Regions are expected to support the Agency’s Next Generation Compliance by promoting electronic monitoring and reporting to improve targeting and transparency as well as by advancing new monitoring technologies to enhance the ability to identify violations impacting public health and harming the environment.

OC Resources Provided for TSCA Implementation

OECA received appropriated funding for portions of the LBP, PCB and Asbestos programs to be given to identified states, tribes and territories (collectively, states) under State and Tribal Assistance Grants (STAG) for implementation of those programs. Additionally, OECA has received funds appropriated for Environmental Program and Management (EPM) LBP compliance monitoring activities. These funds are not to be directed to other programs or for other uses.

Funding for State/Tribal Programs

In the past, OECA has made about \$5 million (\$M) in STAG funds available annually for implementing the LBP, Asbestos, and PCB programs. OC has distributed these funds to the Regions, who then negotiate grant agreements with the states to support state compliance and enforcement activities. The Regions conduct oversight of the state programs and grants. Regional direct implementation of the asbestos, PCB and LBP programs has been expected to complement state implementation activities. Further guidance on Regional direct implementation activities and

grant oversight for asbestos and PCBs will be provided in implementation plans addressing budget adjustments in these areas.

Currently, \$1.5M (of the total \$5M STAG dollars) support LBP programs. These funds are divided among: 1) 41 states and two tribes authorized for the § 402(a) lead abatement program; 2) five states authorized for the § 406(b) Pre-renovation Education (PRE) program; and 3) twelve states authorized for the RRP program. The remaining \$3.5M in STAG funds support twelve asbestos waiver states, fourteen non-waiver states and nine PCB state programs. For FY 13, OECA will evaluate the future strategic use of STAG funds and the oversight of state grants.

Funding for Regional Programs

OECA has made about \$1.2M in EPM funds available annually for regional Senior Environmental Employee (SEE) inspectors for LBP direct implementation programs. It is important that these EPM funds be used only for compliance monitoring activities (i.e., activities that determine compliance status) and not for enforcement or administrative support.

Screening Tools and Checklists

OC plans to develop and refine screening tools/checklists that the Regions may use to support multi-media activities that can be included in the Region's TSCA02 reporting commitment. These tools will be designed for an inspector to quickly complete while at a facility conducting an inspection for programs other than TSCA. The use of these tools may help the Region to target for further inspections or to determine that the facility is likely to be in compliance with the applicable TSCA requirements. In any event, these tools will provide EPA with additional coverage for the TSCA programs. The Regions and states are free to develop and use their own checklists/screening tools that are as least as inclusive as the HQ tools. If they do, they are expected to share those tools with HQ, the other Regions and states. OC will ask for electronic copies of such tools during the monthly conference calls and will establish a location where they will be available for anyone to review and use for their own programs.

1. Link with Office of Chemical Safety and Pollution Prevention's Top Priorities

OECA addresses the Office of Chemical Safety and Pollution Prevention (OCSPP) priorities for TSCA programs in the following way:

- **Reduce Lead Risks**: OECA provides overall direction to Regions and authorized states, tribes and territories to promote compliance with all of the LBP rules, with a significant focus on the RRP Rule.
- **Assess and Reduce Risks from New and Existing Chemicals**: OECA focuses on compliance with TSCA Section 5.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

TSCA's enforcement programs are significant to communities because they address chemicals that can pose serious risks to human health and the environment. Lead-based paint is particularly dangerous to children: exposure may cause reduced intelligence, learning disabilities, behavior problems, and other developmental delays. Because LBP is found in pre-1978 buildings, it is more common in communities predominated by older housing; in some cases, this housing is in low-income, minority, and environmental justice (EJ) communities. Due to these risks, OECA has made ensuring compliance with the TSCA LBP requirements its top priority for the TSCA compliance monitoring and enforcement program.

ACS Commitments and Implementation

COMMITMENT TSCA01: Project the total number of FY2013 TSCA inspections. In the comment field of the Annual Commitment System (ACS), the Region shall break out the number of projected inspections by TSCA program area (LBP, New and Existing Chemicals, formaldehyde,). *Note: For the reasons discussed in the executive summary, the LBP component of this TSCA ACS commitment (TSCA 01) will serve as OECA's FY 2013 measure of compliance work being done to protect children's health.*

COMMITMENT TSCA02: Report other compliance monitoring activities at the end of the year; and break-out the description of other such activities by TSCA program area. (See the CMS and the future outcomes of the compliance monitoring national dialogue for more details).

For Regional ACS planning purposes, Regions should target their FY2013 ACS commitments based upon a historic baseline (e.g., the last three years of representative TSCA resources available for inspections and other compliance assurance activities), and describe how those resources will be utilized in FY2013. If the Region's FY2013 bid is significantly lower than its recent past output (or lower than national output norms consistent with resources), then the Region should be prepared to explain the rationale for such deviation to Headquarters.

Regions may need to make adjustments before or during the fiscal year to accommodate potential activities for the new formaldehyde rule (discussed below). Such potential activities include work with other programs related to TSCA screening activities. In addition, some inspection resources may be shifted to other compliance monitoring activities (e.g., where a Region has a backlog of enforcement actions, it may shift inspection resources to work with local housing code authorities to ensure any ordered repairs to target housing are done in compliance with the RRP requirements).

Regions that remain invested in the new and existing chemicals program should direct 10 percent of their TSCA resources to ensuring the safety of chemicals (new and existing chemicals) and the formaldehyde rule (where appropriate) and 90 percent of their TSCA resources to the lead-based paint (LBP) program. All other Regions should devote up to 5 percent of their TSCA resources to the formaldehyde rule (where appropriate) and the remaining percent of their TSCA resources to the LBP program. Almost all (i.e., 95 percent) of the LBP resources should be directed to the RRP Rule. Section 1018 inspections should only be conducted in response to tips and complaints or as part of a RRP or abatement inspection.

a. TSCA Lead Risk Reduction Program

Regions and authorized states are expected to implement the CMS for LBP, including the principles and activities identified for the RRP, § 402 Abatement, § 406 PRE, and § 1018 rules as an integral part of the Region's One-TSCA program. The CMS articulates and encourages coordinated activities aimed at: 1) determining compliance among the regulated universe; and 2) using non-traditional approaches to promote compliance by regulated operations.

Regions should implement the program priorities and activities set out in detail in the CMS. Those activities include conducting an appropriate balance of the various types of inspections (e.g., record reviews, training course audits, and work-site inspections); and conducting other compliance assurance activities, such as using checklists and other screening tools for cursory compliance reviews, working with local housing code authorities to help ensure only certified firms are used for repair and renovation work on pre-1978 housing. As discussed above, to effectively accomplish these objectives, the CMS establishes that Regions must know the regulated universe to the extent practicable, and prioritize the environmental problems to be addressed (i.e., focus on hot spots).

For LBP inspections, once the universe is known, the Region should use the targeting principles set forth in the CMS. Additionally, Regions may wish to focus RRP inspection activities at primary schools and large child care centers where there is a better chance of obtaining access to the facility and observe contractors' actual compliance with required work practices because children are present and the renovation activities may occur over a long period. While at these facilities, inspectors should also see if there are any opportunities to leverage resources as described in the CMS.

Regions should:

- Respond appropriately to tips and complaints, as described in the CMS; and actively follow-up on the highest priority action items as determined through an objective triage process such as described in the CMS.
- Target for, and conduct audits at the Region's most active EPA-accredited training provider programs to assure and promote a high level of compliance across the regulated community (each Region will determine the appropriate number of audits based on the particulars of that Region).
- Focus efforts in high-priority lead "hot spots" as described in the CMS (e.g., geographical areas with evidence or indicators of significant or wide-spread EBLs).
- Focus primarily on RRP/PRE compliance. At least 95% of the Region's LBP compliance efforts should be directed to RRP/PRE, and no more than 5% to new § 1018-only compliance. The CMS encourages Regions to employ integrated strategies and targeting so that, while focusing primarily on RRP/PRE, the Region may concomitantly monitor for and enforce compliance with other LBP rules (the § 1018 and § 402 Abatement rules), as appropriate (e.g., the Region may conduct § 1018 inspections in conjunction with RRP/PRE inspections of property management firms that also conduct property renovations).

- Use a variety of methods to inspect for RRP/PRE compliance: record review inspections for RRP and PRE; and field work practice for RRP.
- “Bundle” press activities related to filing complaints and coordinate with OECA to bundle cases from multiple Regions as appropriate.
- Partner with state and local government code enforcement and building permit programs and state/local health departments to conduct joint inspections.

In addition, Regions should do the following:

- In areas where Regions conduct integrated strategies (as part of the national RRP enforcement strategy or otherwise), include methods to better target compliance monitoring and enforcement activities, such as partnering with state and local health departments and health care providers to identify lead hot spots and individual properties associated with EBLL children.
- Work with their LBP programmatic (non-enforcement) offices in the region to encourage states to seek authorization for the RRP program.
- Conduct appropriate oversight of authorized state § 402 and § 406 programs.
- Closely investigate the applicability of the LBP regulations to housing at federal facilities.¹⁸

All of these considerations should be covered when reporting activities for the Region’s TSCA 02 commitment.

b. TSCA New and Existing Chemicals Programs

The TSCA New and Existing Chemicals Program is exclusively a Federal program that provides for review of the toxicity of chemicals prior to their manufacture and importation to prevent unreasonable risk to human health and the environment. To assist the Regions in targeting inspections, OECA commits to working with OCSPP to obtain lists of facilities for targeting inspections. Additionally OC plans to develop a tool to help all media inspectors 1) screen for facilities potentially subject to core TSCA requirements when performing their pre-inspection activities for the facility; and 2) ask a few appropriate questions in the field to help determine the facilities compliance with TSCA if applicable.

The Regions should:

- Focus TSCA compliance activities on chemical manufacturing, distribution, processing, use, or disposal in emerging technologies and/or use of new chemicals.

¹⁸ Many federal agencies maintain housing for both federal employees/dependents, contractors, and/or tenants, and such housing is subject to the requirements of the LBP regulations, including the LDR. However, consistent with the Kingsville Naval Air Station decision (March 17, 2000, TSCA Appeal #99-2), FFEO should be consulted for any case wherein “assignment of quarters” by the Department of Defense (DOD) is involved.

- Increase the use of TSCA subpoenas for investigation of potential noncompliance
- Where field activities are conducted (inspections or screening), focus on ensuring facility compliance with:
 - TSCA § 5 - new chemicals requirements such as Pre-manufacturing Notice (PMN); Significant New Use Rules (SNUR's); Low Volume Exemptions (LVE's), and on chemicals of concern including short chained and other chlorinated paraffins, fractions and other priority or Action Plan chemicals or targets.
- Target existing chemical reporting and record keeping requirements such as TSCA § 8(c), (d) and (e) and the Chemical Data Reporting Rule.
- Bundle the settlement or litigation of multiple TSCA § 4 and nanotechnology cases.
- Evaluate and prioritize tips and complaints and follow-up as appropriate. Targeting for future inspections based on credible leads from tips and complaints should also be considered. Regions implementing this program are also expected to follow-up on all referrals received from headquarters, states, tribes, and the public. Regions not implementing this program should refer tips and complaints the Waste and Chemical Enforcement Division within the Office of Civil Enforcement.
- Obtain information through inspections and/or subpoena as appropriate. Initiate civil enforcement actions, as appropriate, to bring facilities into compliance.
- Focus compliance, monitoring and enforcement efforts on the 2011 Chemical Data Reporting Rule.

c. TSCA Formaldehyde Programs

On July 7, 2010, the Formaldehyde Standards for Composite Wood Products Act was signed into law. It restricts formaldehyde emissions from composite wood products sold or manufactured in the U.S. -- including those imported. These products include hardwood plywood, medium-density fiberboard, and particle board, as well as goods made from these wood products. The law amends TSCA by adding Title VI.

The law requires EPA by January 1, 2013, to implement formaldehyde emission standards that apply to products sold in the United States, based on the rules originally established by the California Air Resources Board (CARB). In addition to these standards, Title VI requires third-party testing and certification to ensure that subject products comply with the standards, and it directs EPA to work with Customs and Border Protection and other relevant federal agencies to enforce the standards for imported products.

During the first year of implementation, EPA should focus on (1) determining the universe of composite wood product manufacturers, third-party certifiers (TPCs) and accrediting bodies and (2) emissions testing compliance by composite wood product manufacturers.

OCSPP is currently planning a database which will store information received from composite wood product manufacturers. If the database is fully functioning by 2013, the database should be checked to determine the universe of composite wood product manufacturers.

Information submitted to TPCs by composite wood product manufacturers can be inspected and checked against information in the database for compliance with the formaldehyde rule.

Accrediting Bodies can be inspected to determine who the TPCs are and whether the TPCs are operating in accordance with the rule.

d. TSCA PCB Programs

Many important efforts to protect people from exposure to PCBs are continuing to occur in programs other than enforcement; for example, in FY 2013, OCSPP regional offices will provide assistance to schools when requested in assessing the presence of PCBs in caulk, fluorescent light ballasts and other sources and promote education and outreach efforts on PCBs in schools. These activities were taken into account in the decision to have a limited national enforcement presence in this area; EPA will focus on addressing nationally-significant PCB civil and criminal violations that may present a significant risk to human health or the environment and maintain some field presence at EPA-approved commercial PCB storage and disposal facilities.¹⁹

e. TSCA Asbestos Program/AHERA

Since 1986, when the Asbestos Hazard Emergency Response Act (AHERA) amended TSCA to require schools to inspect their buildings for asbestos-containing materials and implement asbestos-management programs, EPA has devoted considerable resources to educating schools about the risks associated with asbestos and assisting with managing these risks. The success of these efforts means that EPA is able to reduce its civil and criminal enforcement presence in this area to a limited national presence, with a focus on the most egregious violations of AHERA²⁰.

States that have “waiver” status are expected to:

- Within a reasonable period of time, investigate and respond appropriately to any tips/complaints containing allegations that provide a reasonable basis to believe that a violation has occurred.
- Conduct inspections and take appropriate enforcement action in each state and in Indian Country to assure equitable protection and ensure compliance with the TSCA asbestos regulations.
- Enforce under state law, in states that have "waiver" status.

3. Reset Our Relationships with States and Tribes

The Regions should work with states and tribes to identify any obstacles to implementation of the expectations above and work to resolve them. This includes convening routine and regular meetings between the region and states to discuss progress towards meeting annual program and enforcement commitments, and how the state has been performing overall in its implementation of the program.

¹⁹ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

²⁰ See previous footnote.

The Grants Administration Division issued guidance for the TSCA grants program that requires that negotiated grant workplans prominently display the following three Essential Elements: Essential Element 1 - Strategic Plan Goal; Essential Element 2 - Strategic Plan Objective; and Essential Element 3 - Workplan Commitments plus time frame. Regional Program Offices must electronically enter workplans and progress report information into an IT application currently being developed.

Where states are not meeting performance expectations, Regions should focus oversight resources to the most pressing performance problems in states and should work to demonstrably improve state performance. OECA and the Regions will use a variety of mechanisms to ensure adequate oversight, including regular meetings and consultations with states/tribes, grant reviews, oversight inspections, and enforcement actions.

Regions should provide:

- Regional updates on actions and outcomes through discussions with OECA (generally, through existing channels of communication).
- Review of state inspection reports, feedback to states, and enforcement actions as appropriate, where inspections are conducted by states with EPA credentials. Additionally, Regions should provide reports to OECA in accordance with Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA (2004).
- EPA Order 3510 requires that each EPA office which prints and distributes credentials (i.e. federal credentials issued to state and tribal inspectors to conduct inspections on behalf of EPA) conduct an annual inventory, including an annual physical possession check of 10% of the credentials.
- Consultation with tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs. Regional direct implementation in Indian country includes applying the various TSCA compliance monitoring strategies and enforcement policies and *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)*. *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* contains procedures for consultation with federally-recognized tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA's consideration of enforcement actions. The threshold criteria are not intended to, and should not result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the U.S.

The Regions should work with the state/local agencies and tribes to identify priorities and align resources to implement the above commitments. This includes:

- Participating with delegated agencies in the ongoing dialogue at the national level to discuss what activities may be counted under a compliance monitoring strategy. Traditionally, on-site compliance evaluations and investigations have been the primary means for undertaking coverage of the regulated universe. However, as the regulated universe of sources continues

to expand resulting in a significant challenge to our ability to conduct on-site evaluations, the Regions and delegated agencies need to use available resources in the most effective manner.

- Regions should focus primarily on state program oversight and capacity-building to ensure states are appropriately using tools to help ensure compliance, and more importantly, integrating those tools to help effectively reduce EBLLs and LBP hazards in identified lead hot spots; support states and tribes on complex or multi-state or multi-tribal compliance issues; and consult with states and tribes to identify issues that may warrant areas of national focus.
- For TSCA asbestos, Regions should encourage states and tribes to develop their own regulations and apply for a “waiver” where applicable.

4. Improve Transparency

The Regions should:

- Work with the states and tribes using EPA credentials to ensure that the data on inspections they conduct on EPA’s behalf is input into national databases. For waivers states, ensure compliance and enforcement data are provided in aggregate form as part of midyear and end of year evaluation reports. (Note: This is not applicable to the lead program.)
- Enter all federal inspections, including the Inspection Compliance Data Sheet (ICDS), and enforcement cases into ICIS.
- Publicize regional enforcement actions taken through press releases.
- Distinguish state compliance data from Indian country information.
- Make information available to communities, including tribal communities, who may lack access to the internet.

5. Relevant Policies and Guidance

Additional information about OECA’s TSCA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/tsca/index.html>

<http://www.epa.gov/compliance/civil/tsca/index.html>

<http://www.epa.gov/compliance/monitoring/programs/tsca/asbestos.html>

C. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)

A major focus of EPA’s FIFRA program is to ensure compliance by pesticide registrants and to provide assistance, training, and oversight to states and tribes carrying out FIFRA-related compliance and enforcement activities under cooperative enforcement agreements. The statute gives states primary compliance monitoring and enforcement responsibility for the use of pesticides within their respective jurisdictions. However, EPA directly implements FIFRA in Indian country, including compliance monitoring and enforcement for pesticide use, although Tribes enforce similar provisions under their own tribal codes through enforcement agreements with EPA. For more

information on the FIFRA compliance monitoring program, readers are urged to review the FIFRA Compliance Monitoring Strategy (CMS) which provides detailed information about the FIFRA core program implementation, targeting, prioritizing and types of inspections, program oversight, and other aspects of the FIFRA compliance monitoring program, as well as the Joint EPA OPP/OECA State and Tribal Cooperative Agreement Guidance which directs state and tribal activities to establish compliance monitoring priorities.

1. Link with Top Office of Pesticide Programs Priorities

OECA's compliance monitoring and enforcement efforts support the FIFRA program priority of a strong field presence to ensure that the risk mitigation decisions of the Office of Pesticide Programs result in their intended protections and to reduce pesticide risk. In addition, both OECA and the Office of Pesticide Programs (OPP) identify Pesticide Occupational Worker Safety as one proposed regional-specific priority focus area. Effective implementation of EPA's occupational safety programs is one of OPP's highest priorities, and a key component of OPP's strategy to ensure the safety of pesticide chemicals, prevent pollution and advance environmental justice and children's health.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

EPA protects human health and the environment by ensuring compliance and effectively enforcing FIFRA regulatory requirements through federal inspections and enforcement. The core program also protects human health and the environment, including water resources, through support and oversight of state and tribal monitoring and enforcement of pesticide use/misuse.

EPA will ensure compliance with and effective enforcement of FIFRA regulatory requirements. The core program should include compliance and enforcement activities covering: protecting workers, pesticide registration and labeling, data quality requirements²¹, efficacy and compositional integrity of hospital disinfectant products, pesticide producing establishment registration and annual production data reporting, import/export requirements, registrant reporting of unreasonable adverse effects and compliance monitoring and enforcement of non-compliant pesticides.

In conducting this work, all Regions are expected to participate in Focus Areas A, B and C discussed on the following pages. States and tribes with cooperative enforcement agreements may also become involved in supporting these activities, as appropriate, by including relevant activities in their negotiated cooperative agreements.

Focus Area A: FIFRA Imports of Non-compliant Pesticides

EPA's enforcement program addresses the illegal importation of noncompliant pesticide products into the United States by bringing enforcement actions against importers and others, and working with other governments, agencies and stakeholders to prevent and reduce risks of unsafe products

²¹ The FIFRA Good Laboratory Practices Standards Program is a Headquarters only program and an area where OECA will maintain a limited national presence.

entering our country. Illegal pesticide imports may present significant human health and environmental risks and have been linked to poisonings of children and pets, so interception before they enter the United States is critical.

EPA Regions have been the primary source of inspections and enforcement for this area. States may become involved through region-to-state referrals to monitor import compliance, or states may encounter imported products during the course of their compliance monitoring inspections. EPA should make their states aware of EPA's strong interest in import compliance and encourage them to collaborate with EPA when situations warrant.

Currently, the FIFRA compliance monitoring and enforcement program manually reviews FIFRA Notices of Arrival (NOAs) for pesticide products and devices entering the U.S. and provides direction and guidance to Customs and Border Protection (CBP) as to whether the pesticide should be allowed to enter U.S. commerce. The planned transition to an automated processing system in FY 14 [the Automated Commercial Environment in the International Trade Data System (ACE/ITDS)] creates opportunities to reduce the investment in manual processing of FIFRA Notices of Arrival (NOAs) to a limited national presence. The budget adjustment focuses solely on the processing of NOAs and not other aspects of the import compliance and enforcement program. Once fully functional, ACE/ITDS will process the majority of NOAs, significantly reducing the need for manual review and approval by EPA, and allowing EPA to reduce its resources currently devoted to this work.²²

EPA will continue to:

- Monitor import compliance through inspections at the designated destination point for the imported products. Such inspections would be conducted after the imported pesticides have been released by the CBP and have entered into U.S. commerce. Take physical samples when appropriate.
- Place special emphasis on compliance of pesticides imported into Foreign Trade Zones for storage, processing or packaging prior to release into U.S. commerce.
- Focus on importers with a history of noncompliance or significant importation activity from countries frequently associated with noncompliant shipments.
- Screen for potential discrepancies concerning legitimate sources and countries of origin identified on the confidential statement of formula for both active ingredients used to produce registered end-use pesticides and the production of manufacturing-use pesticides, while reviewing Notices of Arrival (NOAs). Where potential discrepancies are noted, follow-up investigations may be warranted to further evidence collection, at U.S. registered agents for foreign producers and domestic producing establishments.

²² Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

- Take enforcement actions, as appropriate, to ensure optimum deterrence effect and enforcement impact.
- Address noncompliance by taking enforcement action against violative import shipments and then, when appropriate, develop cases that address corporate-wide noncompliant behavior.

Building on the success in addressing non-compliant pesticide products, EPA will continue to work with CBP's Commercial Targeting and Analysis Center (CBP CTAC) by combining and leveraging resources to implement national operations strategically focusing on importers with a history of noncompliance or significant importation activity from countries frequently associated with noncompliant shipments.

Focus Area B: Supplemental Registrations

Supplemental pesticide registrations are a continued source of concern for regulators across the country. States, which conduct thousands of marketplace inspections each year, have raised concern over supplemental or "distributor products" labels for years, citing them as a major source of noncompliance. Supplemental registrations are distributor labels approved for marketing as a sub-registration to a registered pesticide. Although required to be consistent with the labels of the basic registered products, distributor product labels frequently deviate substantially from the EPA accepted labels. Such unapproved product labeling can lead to misuse and misapplication as well as pose significant risks to the users who rely on product labels to inform them about proper and safe pesticide use. Due to the potential risk associated with the use of improperly labeled pesticides, it is important that the EPA aggressively pursue compliance for supplemental registrations.

EPA issues supplemental registrations for a wide range of pesticide products in every toxicity category, including agricultural chemicals, pesticides used for residential pest control, lawn and garden pesticides, as well as for disinfectants and other antimicrobial products. To address noncompliance in this focus area, EPA will place emphasis on registrants with a large number of current supplemental registrations or registrants marketing Tox 1 category distributor products. EPA will determine distributor product compliance by undertaking a comprehensive review of product labeling and product chemistry, when appropriate.

Each Region will conduct inspections as appropriate to monitor for label/labeling compliance, product composition, and compliance with the provisions as described in to 40 CFR § 152.132, including the restrictions on where and how a supplemental distributor pesticide may be produced and packaged. This should include any contract manufacturing agreement(s) that should be in place. States may wish to participate, too, and can be a significant source of information about noncompliant distributor products.

The EPA should develop enforcement actions to address corporate-wide compliance. Regions should coordinate with the Office of Civil Enforcement's Waste and Chemical Enforcement Division and other Regions in developing corporate-wide cases. In addition, Regions should take enforcement actions, as appropriate, to ensure optimum deterrence and compliance impact.

Focus Area C: Region-Specific Focus Area Developed in Consultation with States

In FY13, in addition to the focus areas A and B above, Regions will develop a separate focus area with their State Lead Agencies (SLAs) to address a FIFRA enforcement issue of regional and state significance. Although SLA and EPA enforcement priorities differ, there are many issues where EPA and state interests overlap and as such, may be good candidates for an NPM focus area. This focus area presents a unique opportunity for Regions and states to comprehensively address a pesticide enforcement problem area. For example, an EPA Region might choose in consultation with its states to focus on rodenticide products. Under this scenario, states might look a rodenticide product misuse or pesticide applicator certifications while the Region would look at rodenticide production and labeling.

The State FIFRA Issues Research Group (SFIREG) conducted a survey of state enforcement priorities and most common FIFRA violations, and identified several overlapping areas including pesticide misuse (over application, unlabeled pesticides) and pesticide drift. Additional issues identified by EPA that may be appropriate for a coordinated enforcement focus area under this FY13 are listed below.

- Fumigants/Fumigation
- Worker Safety
- Retail Marketing
- Container/Containment

More detail on each of these areas is provided below. In developing a focus area, the Regions should consult with the states to identify the states' top enforcement priorities and focus on an environmental or human health problem that advances both state and federal enforcement programs.

Commitment FIFRA-FED1: Project regional (federal) FIFRA inspections. Each Region should conduct a minimum of ten (10) FIFRA inspections. In the Comment Section, provide the number of federal facility inspections.

Option 1: Fumigants/Fumigation

Fumigants are a class of highly toxic pesticides that are efficacious in a gaseous stage, making them very hazardous to handle and use. These products have a wide range of application use, including treatment of residential structures, warehouses, transportation vehicles, grains and other agricultural commodities, and soil. Improper or inadequate use directions and safety precautions on the product labeling and improper use of these products often result in serious exposure incidents potentially leading to death or hospitalization. Due to the potential risk associated with fumigant use, it is critical that EPA and the states work collaboratively to proactively monitor compliance with existing product labeling requirements, as well as proper use of fumigant products.

The NPM Guidance's fumigants/fumigation focus area is primarily targeted on product regulatory compliance and use/application compliance for all areas of fumigation including structural

(residential and commercial), transportation vehicles and containers, soil, agricultural commodities, and other products.

Targeting should consider production factors (facility location, production volume, and product) as well as use/application factors (use patterns of concern and volume/frequency of use). For FY2012, participating Regions are expected to implement one or more of the compliance monitoring approaches identified below and to initiate appropriate enforcement actions.

EPA has primary responsibility for monitoring compliance and initiating enforcement action against violators of pesticide user requirements where states lack primacy and in Indian country unless a Region and a tribe maintain a cooperative enforcement agreement. In addition, states have primary responsibility for monitoring compliance and initiating enforcement action against violators of pesticide use requirements (referred to as “primacy”). Regions are encouraged to determine whether there are opportunities for federal cases to support state efforts. Federal involvement or support can provide significant benefits by addressing noncompliance from a national corporate-wide perspective, facilitating compliance efforts involving multiple states and/or Regions, and enhancing public awareness.

OECA will work with OPP to obtain FIFRA Section 6(a)(2) information across a broad class of pesticide fumigants including structural, grain, and soil, among others. Section 6(a)(2) information, together with information regarding fumigant incidents from the states, press and other available sources, will help target fumigant uses where an enforcement monitoring presence may significantly deter future violations.

Regions should work with their states to identify federal and state PEI opportunities, with special emphasis placed on the priority fumigants frequently involved in exposure incidents (i.e., sulfuryl fluoride, methyl bromide, aluminum phosphide, zinc phosphide, metamsodium, and chloropicrin). State PEIs can be applied toward meeting negotiated PEIs commitments within existing cooperative agreements. Physical samples of fumigant gases should not be taken; only documentary samples of the labeling, container, and other appropriate materials should be sampled. Physical samples of non-gas fumigants can be sampled and analyzed.

When monitoring compliance in application settings subject to FIFRA’s Worker Protection Standards (WPS), such as on-farm use of grain or soil fumigants, compliance with the WPS labeling requirements should also be monitored.

Enforcement actions should be pursued under both state and federal authorities, as appropriate. Similarly, EPA will pursue enforcement actions under FIFRA when noncompliance arises in Indian country. Significant use or product compliance violations discovered during state or tribal investigations should be considered for referral to EPA for federal enforcement, when appropriate. Regions should work with states and tribes to identify opportunities within existing cooperative agreements for federal involvement or case support (particularly in cases involving human exposure, death, or other serious non-compliance). Headquarters will provide assistance, as needed, to states, tribes, and Regions in support of enforcement actions. Headquarters will develop a plan to coordinate filing of enforcement cases to ensure optimum deterrence effect and compliance impact.

Option 2: Worker Safety

Agricultural farm workers and pesticide applicators face a disproportionately high risk of exposure to pesticides (from mixing, loading and applying pesticides; hand labor tasks in pesticide treated crops; and pesticide drift from neighboring fields). Studies show that farm worker families have higher levels of pesticide exposure than non-farm worker families (take-home exposure transfer of pesticide residues and proximity of housing to treated areas). There are 2 million farm workers in the US, over a million certified applicators, and 2–3 million noncertified applicators applying pesticides under the supervision of certified applicators. It is important to protect farm workers from occupational pesticide hazards to ensure their safety in the workplace and viability as a community.

Under FIFRA, states with primacy enforce pesticide use, including the worker protection standards. States with primacy also conduct compliance monitoring inspections. Regions are encouraged to determine whether there are opportunities for federal cases to support state efforts. Where EPA implements FIFRA, including in Indian country, the Agency enforces requirements governing pesticide use and conducts compliance monitoring inspections. Tribes with cooperative enforcement agreements with EPA may conduct compliance monitoring inspections under their own tribal codes.

To optimize the risk reduction potential of compliance monitoring, Regions are expected to place particular emphasis on farming activities that typically involve frequent use of highly toxic pesticides, such as in fruit and vegetable production and on-farm grain and soil fumigation. Compliance monitoring and enforcement activities should include product and use inspections.

Performance expectations for an active federal cooperative compliance/enforcement role within the Worker Safety focus area include:

- Regions should work with their state and tribal partners to target federal and state PEIs (focusing on high toxicity pesticides subject to FIFRA's Worker Protection Standards (WPS) labeling requirements and associated with high-risk applications/uses such as fruit and vegetable production or on-farm grain and soil fumigation) to ensure label compliance.
- Regions should monitor use compliance in application settings (e.g., on-farm grain or soil fumigation, applications to fruit and/or vegetable crops) subject to WPS and monitor compliance with the WPS labeling requirements. Focus should be on pesticides with high risk for exposure.
- Enforcement actions should be pursued under state, federal, or tribal authorities, as appropriate.
- In order to optimize the deterrent impact of the enforcement action, significant misuse violations should be investigated in a comprehensive manner to determine comprehensive compliance with FIFRA.
- States and tribes should be encouraged to refer use and non-use cases to EPA, when appropriate.
- Regions are expected to work with states to identify opportunities within existing agreements for federal involvement or support (particularly cases involving exposure or death).

- Significant use or product compliance violations discovered during state or tribal investigations should be considered for referral to EPA for federal enforcement, when appropriate.
- Headquarters will provide assistance, as needed, to states, tribes, and Regions in support of enforcement actions.
- State and tribal inspectors who inspect on behalf of EPA must be trained and credential per *Guidance for Issuing Federal EPA Inspector Credentials for Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004)

Option 3: Retail Marketing

Until recently, EPA has focused enforcement against the producer or registrant of violative product(s). However, retailers of noncompliant products must also comply with FIFRA. One action against a retailer may result in bringing numerous pesticides into compliance with FIFRA. Taking enforcement at the retail level, as well as at the producer or registrant level, can have a very significant impact on gaining product compliance. Deterrence likely increases due to heightened end-use consumer awareness and the adverse publicity generated against the retail store, the product, and the manufacturer.

Retail marketers of pesticide products are positioned to directly interact with the consuming public, so any enforcement action taken against products being offered for sale is quickly noted by the buying public and, as a result, purchasing patterns of the consumers can be quickly altered, thus creating a significant financial impact on all businesses with a financial interest in the distribution and sale of the pesticide product(s) involved. This provides a tremendous incentive for registrants to quickly return the product(s) to compliance so that a positive business relationship with retailers can be preserved and a positive image can be presented and/or restored with the consuming public.

Regions should focus on national or regional retail chains operating multiple stores nationwide or in a multi-state area. Such stores often market similar products throughout their network of stores so that compliance issues can have corporate-wide implications. Such consumer-based retail stores typically offer a wide variety of pesticide device products, so addressing noncompliance at this level can immediately impact multiple pesticide producers.

Alternatively, Regions may elect to target major distributors who sell directly to specialized niche markets rather than to the general public. Examples of these retailers might be distributors that sell pesticide products and other supplies directly to hospitals, beauty salons and barber shops, funeral homes, and restaurants. These industries typically do not deal directly with traditional retail outlets for their supplies but instead purchase from specialized niche distributors. These direct-retailers often handle very specialized products not commonly found in the retail stores targeted to the general public and, as a result, compliance may not be as closely monitored. Additionally, many of these retailers handle distributor-label disinfectants, a product sector which has a long history of noncompliance.

Performance expectations for the retail marketing focus area include:

- Regions should conduct compliance monitoring inspections at targeted retailers.

- Regions should work with their state and tribal partners to encourage producer establishment and marketplace inspections in support of this focus area, including targeting follow-up PEIs at producers of violative products discovered at the retail inspections. Regions may consider making inspection referrals to the states/tribes to follow-up on leads and otherwise supplement federal efforts.
- Regions are expected to take enforcement actions, as appropriate, to ensure optimum deterrence effect and compliance impact.

Option 4: Container/Containment

To ensure effective implementation of the new container/containment regulations, Regions, states and tribes should monitor compliance with the requirements in all areas of the regulated universe and for all aspects of the container/containment rule. In particular, inspections should focus on compliance with container design and labeling, residue removal, and containment requirements for registrants, re-fillers, agricultural retailers, commercial applicators, and custom blenders, as appropriate. User inspections, conducted by states and tribes, should focus on compliance with label directions for storage, cleaning, and disposal of containers.

States and tribes have been actively addressing the new regulations and are likely to continue that emphasis under the State Grant Guidance.

For Regions electing to participate in the container/containment focus area, performance expectations include:

- Conducting compliance monitoring inspections at targeted producers, distributors, and other regulated non-user entities subject to the container/containment rule.
- Working with states and tribal partners to encourage a full range of user and non-user inspections to monitor all aspects of compliance for the container/containment rule in support of this focus area. States and tribes should be encouraged to refer significant noncompliance cases to EPA for enforcement action.
- Taking enforcement actions, as appropriate, to ensure optimum deterrence effect and compliance impact.

3. Reset Our Relationships with States and Tribes

The Regions should work with states and tribes to implement the expectations above including:

- Convene routine and regular meetings between the region and state to discuss progress towards meeting annual program and enforcement commitments, and how the state has been performing overall in its implementation of the program. Note: meetings can be via conference calls but at least one meeting each year should be face-to-face subject to available resources. Regions may rely upon existing communications with states to meet the intent of this requirement.
- Where states are not meeting performance expectations, Regions should focus oversight resources on the most pressing performance problems in states and should work to demonstrably improve state performance. In the absence of an appropriate response by a delegated agency, the Region should take an enforcement action to address serious

violations. Regions need to take action when necessary to communicate what needs attention to achieve the goals of the federal environmental laws and to ensure a level playing field among states.

- Negotiate, oversee the implementation of and review state and tribal performance under the pesticide enforcement cooperative agreements following existing policy and guidance.
- When doing mid- or end-of-year reviews, include a review of cases based on complaints by farm-workers and those involving one of the NPM guidance focus areas to evaluate whether the enforcement response was appropriate.
- Provide states and tribes targeting assistance, especially related to inspections of producer establishments.
- Ensure that state and tribal inspectors who inspect on behalf of EPA are trained and credentialed per *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA* (2004).
- EPA Order 3510 requires that each EPA office which prints and distributes credentials (i.e. federal credentials issued to state and tribal inspectors to conduct inspections on behalf of EPA) to conduct an annual inventory including an annual physical possession check of 10% of the credentials.
- Regional direct implementation in Indian country includes applying the various FIFRA compliance monitoring strategies and enforcement policies and *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* (January 17, 2001). *OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy* contains procedures for consultation with federally-recognized tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA's consideration of enforcement actions. The threshold criteria are not intended to, and should not, result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the U.S.

4. Improve Transparency

OECA intends to modernize and update the FIFRA-TSCA Tracking System/National Compliance Database (FTTS/NCDB) that contain information on pesticide inspections and enforcement action by state and tribal grantees, in order to improve data quality and provide more timely data entry and public access to data. Until a revised and modernized system is in place, Regions are expected to continue to assure the timely and accurate entry of state and tribal performance data into FTTS and enter their own federal inspection and enforcement data into ICIS.

5. Relevant Policies and Guidance

Additional information about OECA's FIFRA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/fifra/index.html>
<http://www.epa.gov/compliance/monitoring/programs/fifra/wps.html>
<http://www.epa.gov/compliance/civil/fifra/index.html>

Policies and guidance pertinent to the FIFRA focus areas can be found at the following:

- FY2011-2013 Grant Guidance:

<http://www.epa.gov/compliance/state/grants/fifra.html>

- FIFRA Enforcement Response Policies:
<http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>
- FIFRA State Primacy Enforcement Responsibilities: Final Interpretive Rule:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/1983frnotice.pdf>
- Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/1981frnotice.pdf>
- EPA WPS Agricultural Inspection Guidance:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/08-10-appendix4c.pdf>
- Factors To Consider When Establishing A Risk-Based Targeting Strategy For Worker Protection Outreach and Compliance Monitoring Activities:
<http://www.epa.gov/compliance/resources/policies/state/grants/fifra/08-10-appendix4d.pdf>
- Multilingual Labeling for Imports:
<http://www.epa.gov/compliance/resources/policies/monitoring/fifra/imports/multilanglabel.pdf>
- Questions and answers on supplemental labeling, effective date, registration status for labeling purposes, foreign purchaser acknowledgement statements, and confidentiality:
<http://www.epa.gov/compliance/resources/policies/monitoring/fifra/imports/supplabel.pdf>
- Questions and answers on research and development pesticides and active ingredient concentrations:
<http://www.epa.gov/compliance/resources/policies/monitoring/fifra/imports/ai.pdf>
- FIFRA Inspection Manual:
<http://www.epa.gov/compliance/resources/publications/monitoring/fifra/manuals/fifra/index.html>
- WPS Inspection Manual:
<http://www.epa.gov/compliance/resources/publications/monitoring/fifra/manuals/wps/index.html>
- Project Officer Manual: <http://intranet.epa.gov/oeca/oc/ag/manual.html>

D. Specific Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Enforcement Program Performance Expectations

1. Link with Top OSWER Priorities

OECA addresses top OSWER priorities for CERCLA in the following way:

- Cleaning Up Our Communities: In an effort to improve the accountability, transparency, and effectiveness of EPA's cleanup programs, EPA initiated a multiyear effort in 2010 to better use assessment and cleanup authorities to address a greater number of sites, accelerate cleanups, and put those sites back into productive use while protecting human health and the environment. By bringing to bear the relevant tools available in each of the cleanup programs, including enforcement, EPA will better leverage the resources available to address needs at individual sites.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

EPA's CERCLA Enforcement program protects communities by requiring responsible parties to conduct cleanups, preserving federal dollars for sites where there are no viable contributing parties.

Superfund enforcement ensures prompt site cleanup and uses an “enforcement first” approach that maximizes the participation of liable and viable parties in performing and paying for cleanups. EPA negotiates cleanup agreements with potentially responsible parties at hazardous waste sites and, where negotiations fail, either takes enforcement actions to require cleanup or expends Superfund appropriated dollars to clean up the sites. In some cases, EPA takes both actions. When EPA uses appropriated dollars, it takes action against any viable responsible parties to recover cleanup costs. Aggressively pursuing responsible parties to clean up sites ultimately reduces direct human exposure to hazardous pollutants and contaminants, provides for long-term human health protections and makes contaminated properties available for reuse.

As part of the Integrated Cleanup Initiative (ICI), OECA will take early and focused enforcement efforts to compel cleanup. Those efforts include increasing enforcement earlier in the pipeline at non-emergency removal action and remedial investigations/feasibility study (RI/FS) stages; expediting remedial action by holding parties accountable to negotiation timeframes and scheduled cleanup commitments; and rejuvenating the process for identifying responsible parties at the site assessment stage where it appears likely that a removal or remedial response will be necessary. Under the ICI, OECA is reaffirming its commitment to “enforcement first” in all aspects of the Superfund program (i.e., removals, remedial, long-term stewardship, etc.). Regions should continue to focus on activities that maximize PRP involvement at Superfund sites.

Given budget limitations, EPA is making a modest reduction in the Superfund enforcement program, at private and federal facility sites. We think these reductions can be achieved while still maintaining a strong cleanup enforcement program, which is essential to promote the Administrator’s priority of Cleaning Up Our Communities. EPA believes that savings can be achieved by focusing Superfund enforcement resources on the highest-priority sites and those enforcement activities that achieve the biggest return on our investment.²³

CERCLA’s landowner liability protections are designed to be self-implementing, and EPA’s enforcement program has in place a robust set of guidance documents that can assist potential purchasers and developers of Brownfield sites with questions about liability. Relying more on these policies as EPA’s principal mechanism for clarifying liability allows the EPA enforcement program to shift some of the resources previously devoted to site-specific Brownfields enforcement work to traditional enforcement activities necessary to provide protections for the public. We will maintain a limited national presence to allow us to address liability at a particular site when necessary to promote redevelopment.²⁴

EPA’s Superfund enforcement GPRA goals and performance expectations for FY 2013 are:

COMMITMENT OSRE-01: Reach a settlement or take an enforcement action by the start of remedial action at 99% of non-federal Superfund sites that have viable, liable parties.

²³ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

²⁴ See previous footnote.

COMMITMENT OSRE-02: Address all unaddressed costs in Statute of Limitations cases for sites with total past Superfund costs equal to or greater than \$200,000 via settlement, referral to DOJ, filing a claim in bankruptcy, or where appropriate write-off.

COMMITMENT HQ-VOL: Volume of Contaminated Media Addressed (VCMA): As part of the Goal 5 sub-objective, Support Cleaning up Our Communities, the following is the GPRA target:

By 2015, obtain commitments to clean up 1.5 billion cubic yards of contaminated soil and groundwater media as a result of concluded CERCLA and RCRA corrective action enforcement actions.

OECA has reported VCMA for contaminated soil and groundwater media as separate measures in its annual results since 2004. The GPRA target is a national target and regions are not required to post commitments in ACS.

In addition, the CERCLA enforcement program tracks many program-level measures. These measures and their definitions can be found in the Superfund Program Implementation Manual (SPIM) at: <http://epa.gov/superfund/action/process/spim11.html>.

OSWER's National Program Managers Guidance for FY2013 helps establish priorities for EPA's Federal Facilities enforcement program. EPA has CERCLA Section 120 interagency agreements, known as Federal Facility Agreements (FFAs), in place at all but two of 173 federal facility NPL sites. Those agreements govern the cleanups conducted by the facilities and delineate EPA's oversight of those cleanups. In particular, the FFAs identify procedures for resolving disputes and ensuring accountability. Regions are expected to use the agreements, or other applicable enforcement authorities (such as imminent and endangerment orders in applicable circumstances), when federal facilities are not complying with the terms of the agreements or with other legal requirements. Additionally, Regions and Headquarters offices must collaborate to establish remaining and new agreements.

Superfund federal facilities oversight and enforcement, however, is an area where OECA anticipates a significant reduction in investment. Given this reduction in Superfund enforcement resources, EPA must target enforcement to the highest priority sites and to those instances where the biggest potential return is realized on our enforcement dollars. Further, EPA will work with OSWER and the Regions on how to better utilize FFAs to make site performance data available to the public and otherwise empower citizen involvement to enhance cleanup oversight and accountability. OECA, working with OSWER and the Regions, is developing a plan to implement the reduction in work, which will address a reduction in the Agency's ability to staff cleanup disputes and enforce CERCLA FFAs, as well as EPA's interest in greater transparency for the public at these sites. Since all federal facility enforcement actions are "nationally significant" by OECA policy and require consultation with Headquarters, this consultation will be even more important as the Regions contemplate new work in this program.²⁵

²⁵ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

Environmental justice (EJ) is a priority for OECA's waste programs, promoting healthy and environmentally sound conditions for all people. OECA will continue to integrate environmental justice into its Site Remediation Enforcement program by:

- Affirming its commitment to ensure that Regions and States use EJ criteria when enforcing RCRA corrective action requirements to meet RCRA 2020 goals.
- Affirming its commitment to ensure that institutional controls are implemented at sites in environmental justice areas of concern.
- Conducting an environmental justice review of new policy and guidance documents before they become final.

3. Working With States and Tribes

EPA will be implementing its Community Engagement Initiative²⁶ designed to enhance headquarters and regional program engagement with states, tribes, local communities and stakeholders to meaningfully participate in government decisions on land cleanup, emergency response, and the management of hazardous substances and waste. The initiative provides an opportunity for EPA to refocus and renew its vision for community engagement, build on existing good practices, and apply them consistently in EPA processes. Proactive, meaningful engagement with states, local governments and communities will enable EPA to obtain better information about the environmental problems and local situations - leading to more informed and effective policies and decisions.

4. Improve Transparency

The Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS) is the main database for Superfund information. The public can request specific reports by going to <http://www.epa.gov/superfund/>. In addition, Regions should continue to provide site-specific fact sheets, which include enforcement information, on regional web pages. Compliance data will distinguish state information from Indian country information. Information should be made available to communities, including Tribal communities, who lack access to the internet.

²⁶ Information on the Community Engagement Initiative can be found at http://www.epa.gov/oswer/docs/cei_action_plan_12-09.pdf

SECTION VI: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS THROUGH CRIMINAL ENFORCEMENT

1. Criminal Enforcement Priorities

The criminal enforcement program will emphasize:

- EPA's Enforcement Goals, National Enforcement Initiatives for FY 2013-14 and Regional Enforcement Priorities
- Focusing Enforcement through Case Tiering
- Integrating Environmental Justice (EJ) into EPA's criminal enforcement program investigations

Anticipating tight budgets in FY13 and beyond, EPA is focusing its criminal enforcement resources on the criminal violations that have the biggest impact on health and the environment. Recognizing that such cases are often more complex and demanding, and that we will have fewer resources in total, we expect to cut back on the smaller impact cases that, while important, have less potential for broader effect. The areas of expected reduced effort include matters on which other agencies have effective criminal enforcement programs – like the Coast Guard in vessel pollution cases – or where civil enforcement tools may be effective to redress violations – like stormwater violations. EPA will retain capacity to address particularly egregious criminal violations in these and other areas where budget cuts reduce the amount of more routine enforcement we are able to do. CID field offices will consult with Headquarters before investing in new work in these programs.²⁷

Case Tiering. During FY 2013, the criminal enforcement program will continue to implement and refine its case “tiering” system to focus scarce investigative resources using criteria, data and methodologies linked to OECA’s goals. The objective is to focus enforcement efforts by increasing the percentage of Tier 1 and Tier 2 cases, which is both a GPRA measure and a key national priority of the criminal enforcement program. The case tiering methodology prioritizes cases based on four categories of information:

- 1) Human health and environmental impacts (e.g., death or serious injury),
- 2) The nature of the pollutant and the release, (e.g., toxic pollutant, continuing violation)
- 3) Subject characteristics (e.g., significant organizational and/or repeat violators), and
- 4) Strategic Case Factors (e.g., program-wide threats to an environmental protection regime, potential links to broader criminal networks).

Based on these factors, all cases are “tiered” with Tier 1 cases being the most important. Any case involving death or actual serious injury is automatically a Tier 1 case. The tier designation is used throughout the investigative process including the opening of leads, case selection and prosecution and direction of resources for case support. (Note: a case’s tier classification may change as cases are investigated and additional information uncovered).

²⁷ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

Environmental Justice: One of the main duties of EPA's criminal enforcement program is to serve and protect the most vulnerable communities by using law enforcement tools to protect their health and local environment. EJ is a critical concept in meeting that objective.

Criminal enforcement has issued a policy on integrating environmental justice concerns in assessments of criminal investigations, and will use EPA's screening tools and regional input along with other relevant information when tiering criminal cases. OCEFT has modified its Criminal Case Reporting System (CCRS) to track an EJ screening score, a text entry section for recording additional input and a final EJ determination selection when investigating environmental crimes. Cases considered to have potential EJ concerns for criminal enforcement purposes meet the threshold level for a heightened analysis. The criminal enforcement program will then meet with the regional EJ coordinator to obtain additional information supporting why the case has potential EJ concerns.

The program will also continue to work with tribal law enforcement organizations to strengthen the effectiveness of environmental enforcement in Indian country.

2. Link with Critical Program Office Priorities

EPA's enforcement program relies on criminal and civil program coordination at a strategic level, and – in parallel proceedings – on a case-specific basis, to bring to bear the most appropriate enforcement tools to protect human health and the environment.

Each program will adhere to OECA's parallel proceedings policy when both civil and criminal violations are present in an individual case, and will ensure all civil and criminal staff are trained on parallel proceedings.

At the Regional level, the enforcement offices will work with the Special Agents-In-Charge (SACs) to continue and strengthen joint case screening, share salient information and plan how to address violations using the most appropriate administrative, civil or criminal enforcement tools.

3. Strengthen Relationships with Law Enforcement Partners That Support State and Tribal Environmental Crimes Investigations and Prosecutions

The criminal enforcement program will work with the states, Regions, tribal governments, and other law enforcement organizations as appropriate to:

- Help these organizations build capacity to pursue environmental crime and provide investigative support to state-lead prosecutions where appropriate.
- Provide targeted training to state, tribal and law enforcement partners to enhance their abilities to safely spot, report and address environmental violations.
- Continue international enforcement efforts, e.g., working with INTERPOL to combat the illegal transnational shipment and disposal of electronic waste (e-waste).

4. Improve Transparency

The criminal enforcement program will:

- Publicize EPA's criminal enforcement efforts and successes to deter other potential violators.
- Continue to encourage the public's reporting of potential violations and to provide leads through the fugitive web site.
- Ensure that the public can access information about completed criminal prosecutions through the Summary of Criminal Prosecutions.
- Work with OECA's Office of Compliance to incorporate criminal enforcement information into EPA's State Review Framework.

SECTION VII: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS THROUGH THE NATIONAL ENVIRONMENTAL POLICY ACT

A. Specific Federal Activities Program Performance Expectations

Federal activity compliance work focuses on three areas: fostering compliance and pollution prevention through international cooperation; assisting other federal agencies in making environmentally sound decisions which include early public involvement and transparency by complying with the National Environmental Policy Act (NEPA); and guiding EPA's own compliance with NEPA and applicable statutes and Executive Orders. This work implements two of OECA's FY 2013 goals by addressing pollution that matters most to communities and promoting transparency.

Regions should work to assure international compliance and prevent illegal trans-boundary movement of hazardous waste by:

- Improving environmental performance and cooperation in accordance with Goal 6 of the U.S./Mexico Border 2020 Plan (Regions VI and IX).
- Enhancing enforcement, compliance, and capacity building efforts with Mexico and Canada relating to trans-boundary compliance monitoring on the U.S. borders for hazardous waste, CFCs, selected chemicals (e.g., mercury), and other regulated substances (Border Regions).
- Improving performance of joint responsibilities along the border and ports of entry into the United States by working with the Bureau of Customs and Border Protection (CBP) through appropriate contact channels (all Regions).
- Promoting international environmental enforcement through participation in relevant organizations and networks, such as the Enforcement Working Group of the North American Commission for Environmental Cooperation (CEC) and the International Network for Environmental Compliance and Enforcement (INECE), and, in particular, its Seaport Environmental Security Network (regional participation as appropriate, based on subject matter).
- Reviewing the permit and compliance status of U.S. receiving facilities in connection with 100% of the notifications for the import of hazardous waste they receive from HQ EPA and, based on the review, recommending consent or objection to notifications within the time periods allowed under applicable international agreements (all Regions).

- As a regular part of Regional inspection activities, conducting periodic inspections of U.S. facilities which receive imported hazardous waste (TSDFs) and generators and other primary exporters of hazardous waste, cathode ray tubes (CRTs) and spent lead acid batteries (SLABs), based on information provided by OFA which identifies those facilities participating in import and export shipments.

Regions should implement the National Environmental Policy Act (NEPA) by:

- Fulfilling EPA's obligations under NEPA and Section 309 of the Clean Air Act by reviewing and commenting on all major proposed federal actions to ensure identification, elimination, or mitigation of significant adverse effects, and making the comments available to the public.
- Ensuring that projects likely to have significant impacts (e.g., transportation, mountaintop mining, and energy) receive sound environmental analysis, use cooperation among agencies to resolve differences, consider environmental justice, incorporate innovation and support public involvement through a more streamlined and transparent environmental review process
- Ensuring that 70 percent of significant impacts identified by EPA during the NEPA review of all major proposed federal actions will be mitigated. (GPRA measure)
- Ensuring that at least 90 percent of EPA projects subject to NEPA environmental assessment or EIS requirements (e.g., water treatment facility projects and other grants, new source NPDES permits and EPA facilities) are expected to result in no significant environmental impact.
- Promoting Environmental Justice considerations throughout the environmental decision-making process and encouraging public involvement early in the process to maximize transparency.
- Making categorical exclusion determinations or preparing environmental analyses (EISs or EAs) and posting them on the internet for EPA-issued National Pollutant Discharge Elimination System (NPDES) permits for new sources, for states/tribes without authorized NPDES programs; off-shore oil and gas sources, including permits for deepwater ports, EPA laboratories and facilities; and Clean Water Act wastewater treatment plant grants.
- Making Categorical Exclusion determinations or preparing environmental analyses (EAs or EISs) and posting them on the internet for Special Appropriation grants (including the Colonias Wastewater Construction and Project Development Assistance program) for wastewater, drinking water supply, and solid waste collection facilities; Border Environment Infrastructure Funds (for the US/Mexico Border Environment Cooperation Commission projects); and reviews conducted under "EPA's Voluntary NEPA Compliance Policy."
- Entering the results of their '309 reviews and NEPA compliance actions into the Lotus Notes EIS Tracking Database maintained by HQ OFA, and the Special Appropriations Act Projects (SAAP) system maintained by HQ OW, respectively. Additionally, Regions should report to the Office of Federal Activities quarterly on the status of their 309 reviews and NEPA compliance actions pursuant to the Government Performance Reporting Act (GPRA) reporting process, and provide other reports as may be required by the American Recovery and Reinvestment Act of 2009.

SECTION VIII: NATIONAL PROGRAM REQUIREMENTS FOR ADDITIONAL OECA PROGRAMS UNDER GOAL 5

In addition to the national initiatives and programs that can be specifically assigned to one of the four Strategic sub-objectives of water, air, waste/toxic/pesticides, and criminal enforcement, OECA has several programs that contribute to the goals of more than one sub-objective. These programs are: Multi-media, Compliance Incentives, Indian country, and Emergency Planning and Community Right to Know Act (EPCRA). In addition, OECA has specific training and state oversight program requirements.

Specific Emergency Planning and Community Right to Know Act (EPCRA) Program Performance Expectations

EPCRA includes two distinct programs, Community Right-to-Know under EPCRA 313 and release notification and emergency preparedness under CERCLA 103 and EPCRA 304, 311 and 312. The EPA and the public rely on EPCRA for information on chemical releases entering the environment, and on the storage of chemicals at facilities. The EPA, states, tribes, local entities, and communities rely on the combined EPCRA/CERCLA information to prepare local chemical emergency response plans, and to more safely and adequately respond to chemical emergencies. The EPA must ensure that companies report accurately and within required time frames. Regions and states should inspect facilities that may be contributing to pollution problems that matter to their respective communities, and develop enforcement cases that produce significant environmental benefits.

1. Link with Top Office of Environmental Information Priorities

OECA addresses the top Office of Environmental Information priority for the EPCRA programs by increasing compliance of non-reporters and never-reporters.

2. Aggressively Go After Pollution Problems That Make a Difference in Communities

A. EPCRA 313

Regions are expected to:

- Inspect or send information request letters to enforcement targets developed by OECA with assistance from OEI for FY 2013 to address the following categories of concern as resources allow:
 - Twenty potential non-reporters (facilities that report in one year but fail to report the following year)
 - Potential never-reporters (target facilities in the same sectors where a company may not have reported and a similar facility in the sector did report)
 - Potential data quality issues (facilities with significant changes in release estimates from one year to the next or facilities in the same sector where a facility reports significantly more/less than a similar facility in the sector)

- OECA may provide additional targeting as part of an initiative focused on communities, chemicals, sectors of concern or new regulations. Some new TRI regulations are expected to be finalized in FY 2012.
- Resolve Notices of Significant Errors (NOSEs) for enforcement targets developed by OECA with assistance from OEI for reporting years 2007 to the present for using invalid forms, missing signatures, invalid id and invalid chemical name, no data in section 7 and other significant errors that prevent entry of data. Electronic reporting will eliminate future NOSEs. This would be accomplished by issuing a Notice of Noncompliance. If the facility still does not comply, a complaint should be issued.
- Resolve the outstanding TRI MEWeb Noncertifiers for reporting year 2010 with a Notice of Noncompliance. If the facility still fails to certify, a complaint should be issued for failure to file, if appropriate, and as regional resources allow.
- Track and prioritize tips and complaints and follow-up, as needed.
- Any inspections (or other agreed upon compliance monitoring activities pursuant to the national dialogue on EPCRA 313 compliance monitoring) resulting from any of these targeting efforts will count towards the Region's overall commitments for inspections (or other agreed upon compliance monitoring activities pursuant to the national dialogue on EPCRA 313 compliance monitoring).

In addition, Regions should:

- Work with the Air, RCRA and Water compliance and enforcement programs to add EPCRA questions to information requests where appropriate, evaluate the responses, and take appropriate enforcement actions or combine with other enforcement actions.
- Respond to OECA's requests for reviewing draft TRI regulations for enforceability, the revised draft section 313 enforcement response and penalty policy, and any other documents or proposed actions where OECA requests regional input on enforcement matters.
- OECA will assist in targeting inspections, but the Regions are expected to provide legal and technical enforcement case support, and either obtain additional information through federal investigation, show cause letter, subpoena and issue appropriate federal actions as appropriate; or determine that follow-up is not necessary.

COMMITMENT EPCRA 01: Conduct at least four (4) EPCRA 313 data quality inspections (or other agreed upon compliance monitoring activities pursuant to the national dialogue on EPCRA 313 compliance monitoring).

COMMITMENT EPCRA 02: Conduct at least twenty (20) EPCRA 313 non-reporter inspections (or other agreed upon compliance monitoring activities pursuant to the national dialogue on EPCRA 313 compliance monitoring).

B. EPCRA 311/312

EPCRA sections 311 and 312 will continue to require facilities to develop or have available Material Safety Data Sheets and to provide annual reports on a facility's chemical inventory directly to state and local emergency response entities. The statute authorizes citizen suits, and civil suits by state or local governments against owners or operators of a facility for failure to comply with specific EPCRA provisions. Regarding federal enforcement, EPA will maintain a limited national presence but focus resources on the highest priority violations and be available to respond to significant enforcement issues (e.g. violations that create significant risks to communities, workers and first responders or state or tribal requests for federal action against recalcitrant facilities). Furthermore, EPA will leverage Agency-wide resources, as appropriate, to address this program. National Program Guidance from OSWER and OECA indicates that Risk Management Plan inspections conducted at high risk facilities should also include an evaluation of the facility's compliance with EPCRA sections 304 and 311/312.²⁸

C. CERCLA 103 and EPCRA 304

Regions should:

- Use screening and targeting tools to focus limited federal resources on national and regional priority areas. In targeting for inspections, Regions should consider the presence of significant quantities of CERCLA hazardous or EPCRA extremely hazardous chemicals, proximity to population centers, a history of significant accidental releases, and any other information that indicates a facility may be high-risk.
- Evaluate compliance with EPCRA section 304 and CERCLA section 103 during CAA section 112(r) high-risk facility inspections (as described in the CAA Section of this guidance).
- Within a reasonable period of time, evaluate and respond, if appropriate (including taking enforcement action where appropriate) to any tip or complaint containing allegations that provide a reasonable basis to believe that a violation has occurred.
- Evaluate certain continuous release submissions for accuracy and compliance and take appropriate enforcement actions for non-compliance.

3. Reset Our Relationships with States and Tribes

The Regions should continue coordinating with states and tribes.

4. Improve Transparency

The Regions should:

- Enter all federal enforcement cases into national databases.

²⁸ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

- Enter all federal civil judicial consent decrees into ICIS.

5. *Relevant Policies and Guidance*

Additional information about OECA's EPCRA programs can be found at:

<http://www.epa.gov/compliance/monitoring/programs/epcra/index.html>

<http://www.epa.gov/compliance/civil/epcra/index.html>

<http://www.epa.gov/compliance/monitoring/programs/epcra.html>

D. **Federal Facilities Enforcement Program Performance Expectations**

EPA's compliance and enforcement program involves more than 30,000 federal facilities and installations spread across nearly 30% of the nation's territory, among which are some 10,000 currently regulated under the Agency's various statutes. As such, it is one of the EPA's largest and most diverse sectors to oversee. Further, EPA holds these federal agencies accountable to the same standard of environmental compliance as other members of the regulatory community. This equal accountability is specifically required by CERCLA, envisioned by most other statutes and affirmed under Presidential executive order. In addition, federal agencies are now expected to go beyond compliance and serve as an example to others regarding environmental stewardship and management, as Presidential Executive Order No. 13514 on federal environmental sustainability makes clear. EPA's federal facilities enforcement and compliance programs are at <http://www.epa.gov/enforcement/federalfacilities/index.html>

Given limited EPA resources, the Agency's primary focus in this sector has increasingly been on monitoring and enforcement, given stewardship opportunities and reliable compliance assistance offered by others, especially at **FedCenter**, the sector's on-line environmental stewardship and compliance assistance center sponsored by more than a dozen federal agencies. FFEO, in partnership with other federal agencies, will operate and expand **FedCenter** as the central point for federal agency collaboration on greenhouse gas emission response and other green compliance initiatives associated with Executive Order 13514. See <http://www.fedcenter.gov/>

All federal facility enforcement actions are considered nationally significant and require consultation with FFEO. FFEO will focus its resources to make these consultations timely and effective.

Regions are encouraged to target federal facilities as part of all National Enforcement Initiative areas, as well as Regional priorities, national initiatives targeted at geographic areas, EJ areas and federal facilities Integrated Strategies areas. FFEO and the Regional Federal Facility Program Managers also annually negotiate *Integrated Strategies* as part of the National Federal Facilities Program Agenda. These integrated strategies align enforcement, compliance, and stewardship activities and help achieve environmental and health benefits by addressing those problems that matter to communities. In FY 2013, Regions are expected to continue to implement *Integrated Strategies* dealing with storm water, federal underground storage tanks, RCRA corrective action sites and vulnerable communities. FFEO and the Regions will also continue to pursue exploratory integrated strategy areas in FY 2013. These areas focus on enforcement actions at Government

Owned/Contractor Operated/Government Owned/Privately Operated (GOCO/GOPO) facilities, HCFCs/CFCs enforcement and inspections associated with the disposal of unneeded federal real estate. Inspections in these areas, as well as energy extraction enforcement activities on federal lands, qualify for credit under this commitment.

1. Aggressively Go After Pollution Problems That Make a Difference in Communities

Clean water action plan: Regions are expected to continue implementing the *Integrated Strategies* on stormwater. Regions and FFEO are expected to continue to implement a 2011 enforcement settlement with the Department of the Interior's (DOI's) Indian Affairs program for violations at its schools and water treatment plants across Indian country. In addition, FFEO will complete new inspection targeting capabilities for improved monitoring of vulnerable communities associated with federal facilities.

In order to protect people from exposure to hazardous chemicals, Regions are expected to sustain a vigorous inspection and enforcement program at federal facilities, especially focused on National Enforcement Initiatives, *Integrated Strategy* areas and Regional priorities. Underground Storage Tanks, PCBs and AHERA/asbestos, are all areas where OECA will need to reduce its work as discussed in previous sections of the guidance. The Regions are supposed to consult Headquarters before initiating any new work in these areas.²⁹

FFEO strongly encourages the Regions to take appropriate and timely enforcement actions to improve compliance at federal facilities. For FY 2013, federal facility resources should give first priority to taking such actions, as defined within relevant media-specific policies, for each federal facility inspected as a consequence of *Integrated Strategies* efforts. Where appropriate, FFEO advocates including environmental management system (EMS) improvements and SEPs as part of enforcement action settlements. Further, FFEO recommends that the Regions promote greater public awareness and consider greater public engagement through increased transparency of federal facility compliance activity and enforcement actions, which should serve to leverage our own oversight activities across affected communities.

Enforcement Follow Up and Projections

At mid-year each Region must project the number of formal (1) federal facility enforcement case initiations and (2) federal facility settlements for FY 2013. The projections should not include Records of Decision at federal facility CERCLA sites. The projections should be emailed by the Regional Enforcement Division Director to the Director of OECA's Federal Facility Office at the end of the 2nd fiscal quarter. Since these projections are outside the ACS system, they are not commitments by the Regions.

²⁹Note: Please see the UST, asbestos and PCB sections of the NPMG for details related to these program areas. To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

Cleanup at Hazardous Sites

Please note the reference at Section V.D, earlier in this Guidance, to OSWER's NPMG which establishes priorities for EPA's Federal Facilities CERCLA Enforcement program. OECA, working with OSWER and the Regions, is developing a plan to implement the reduction in work, which will address a reduction in the Agency's ability to staff cleanup disputes and enforce CERCLA Federal Facility Agreements (FFAs). Since all federal facility enforcement actions are "nationally significant" by OECA policy and require consultation with Headquarters, this consultation will be even more important as the Regions contemplate new work in this program.³⁰

COMMITMENT FED-FAC05: Each Region must conduct ten (10) federal facilities inspections primarily to support national Integrated Strategy areas, which include stormwater, federal underground storage tanks (UST), RCRA corrective action sites, vulnerable communities and inspections associated with the disposal of unneeded federal real estate. Three exploratory categories from FY 2012 -- inspections at Government Owned/Contractor Operated/Government Owned/Private Operated (GOCO/GOPO) facilities, for HCFCs/CFCs at federal installations and related to energy extraction on federal lands -- will also count. These 10 inspection commitments can be achieved through any combination of single media or multimedia inspections, with the following limitations: (1) a maximum of two UST inspections can count toward this goal; (2) a maximum of four vulnerable community inspections can count toward this goal; and (3) for any multimedia inspection conducted, it shall count as up to four inspections toward this goal if up to four of the individual inspections support the Integrated Strategies and/or official Regionally-designated priorities. Further, (4) up to four official Regionally-designated priorities can count toward the commitment, if the Region determines that inspections up to that number are more desirable than the same number of Integrated Strategy inspections in the Region. Finally, all of these inspections may simultaneously satisfy inspection commitments required in any National Enforcement Initiative or other core program area.

2. Reset Our Relationships with States and Tribes

Regions should continue to work with States to ensure adequate coverage of the federal facility sector through compliance monitoring and enforcement activity. One way the Regions may work with States is to coordinate inspections or enforcement activity where appropriate and to be a resource when questions of enforcement authorities arise, including questions of sovereign immunity. When questions arise, the Regions and States should keep in mind that federal agencies have an obligation to comply with environmental laws. Executive Order 12088 states that, "The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency."

3. Improve Transparency

³⁰ Note: To meet the agency wide schedule, the final OECA NPM Guidance is being issued now, although we have not completed discussions on the content and schedule for the budget adjustments portion of the Guidance. Some of the budget adjustments outlined in this final guidance may be revised as we continue work on implementation plans.

Regions are expected to share environmental information appropriately with the public for federal facility environmental violations, including through press releases for all enforcement actions, and at federal facility cleanup sites. EPA will seek opportunities for legislative change, when appropriate, to ensure federal agency environmental accountability under federal laws.

E. State Review Framework (SRF) Expectations

In FY 2013, Regions are asked to support the SRF in the following ways:

- Develop a plan for completing all Round 3 Reviews by the end of FY 2016, generally completing at least 1 state per year, and submit the plan by October 30, 2012.
- Conduct all Round 3 SRF reviews of state CAA, CWA, and RCRA enforcement programs scheduled for FY 2013.
- Conduct all CWA reviews using the integrated CWA-NPDES program oversight process (permit and enforcement reviews).
- Draft integrated reports for the CWA portion of the reviews following HQ guidance.
- Use data verification and annual data metric analysis to inform regular discussions with states and to track performance.
- Review MOAs as part of the CWA-NPDES review process in light of the OW/OECA criteria for MOA review and checklist to be developed by the end of FY 2012. Ensure that MOAs are updated as needed by the end of FY 2017.
- Follow the Round 3 SRF process and guidance and use Round 3 templates.
- Ensure commitments to implement recommendations for program improvements are captured in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the Region and state, with accountability for carrying out those commitments.
- Use all available data to benchmark and monitor the enforcement performance of their states. Data sources include but are not limited to federal and state data systems, permitting and enforcement performance reviews, and other audit or evaluation reports.
- Enter both draft and final SRF reports, including data metric analyses, file reviews, recommendations, state comments, and benefits arising from SRF reviews, into the Lotus Notes SRF Tracker database upon completion of the review.
- Monitor progress of states and tribes in carrying out the recommendations of SRF Rounds 1 and 2, and record progress quarterly in the SRF Tracker.
- Use results of SRF reviews to inform annual planning and regular progress meetings with states. Where progress toward resolving SRF recommendations is not being made, Regions should escalate their responses.

COMMITMENT SRF01: Develop a plan to complete all Round 3 state reviews by the end of FY 2016 and submit it to OC by October 30, 2012. Before the plan is due, OC and OWM will have a discussion with each Region about their plan. Subsequently, OC and OWM will hold annual discussions with Regions to establish whether any modifications to the schedules are necessary. Identify the states where Round 3 reviews will be conducted in FY 2013. Conduct all Round 3 SRF reviews of state CAA, CWA, and RCRA enforcement programs scheduled for FY 2013. Conduct all CWA reviews using the integrated CWA-NPDES program oversight process (permit and enforcement reviews). Review existing MOAs as part of the CWA-NPDES review process in light

of the OW/OECA criteria for MOA review and checklist to be developed in FY 2012. Ensure that MOAs are updated as needed.

SRF guidance, policies, and templates for reporting are found at http://www.epa-otis.gov/srf/srf_tracking.html.

SECTION IX. FY 2013 OECA WORKPLAN SUBMISSION INSTRUCTIONS

A. Annual Commitment System

Following the release of the final OECA NPM Guidance, Regions should hold discussions with states and tribes to discuss the highest priority work across the Region and states for the upcoming year. This work should be an integration of national, regional and state priorities, and consider permitting and enforcement activities that will lead to improvements in compliance and in environmental conditions. The Regions and states should discuss how to work together to ensure that the highest priority work gets done, including consideration of this NPM Guidance, along with guidance of other EPA programs.

Regions and states should develop draft numbers for the commitments contained in the guidance that relate to state and tribal activities. Regions should also assess their own resource levels in relation to the priority work identified in the regional/state discussions and the state and tribal contributions to that work, and the work outlined in the NPM Guidance.

OECA will hold a planning discussion with each Region at the senior management level during the spring of 2012 to discuss the strategic allocation of the Region's resources, with the goal of informing the negotiation of the ACS commitments for the Region for the coming year. OECA understands that the demands of ensuring compliance with the myriad of environmental laws and programs covered by this NPM Guidance may exceed a Region's resources, and wants to ensure that available resources are put towards addressing the most important sources and most serious violations that affect the environment and public health.

NPMs will initiate the commitment process in the system by entering a value in the "Proposed Bid" field for each commitment measure by May 25, 2012. Current schedules call for Regions to enter their draft targets into the annual commitment system by July 6, 2012. By completing OECA and regional senior management discussions prior to this time, the process for resolving any issues and finalizing annual regional targets should be streamlined. During this same time, Regions should engage states and tribes in negotiations to complete the grant process (PPAs, PPGs, and Categorical Grants), including translating regional targets into formal commitments supported by state-by-state agreements. NPMs and Regions should reach agreement in ACS on FY 2013 performance commitments by October 19, 2012 and notify the Office of the Chief Financial Officer (OCFO) of any outstanding issues for dispute resolution by October 26, 2012. All commitments should be final by November 16, 2012.

B. FTE Resource Charts

The Regions should complete FTE charts which organize FTE information by goal, objective, and sub-objective, and then cross-walk to the media program elements. The importance of the FTE Resource Charts is due to increased interest from the Office of Management and Budget, the Inspector General, and Congress. As in past planning cycles, Regions will receive FTE templates. Regions should submit these completed documents to Michele McKeever on September 30, 2012.

- 2012 Final – Enter the Region’s final FTE allocation for FY2012 in the 2012 Final column.
- 2013 Proposed – Enter the Region’s proposed FTE allocation for FY2012 in the 2013 Proposed column. Headquarters recognizes that FTE levels may change after the Agency receives the FY2011 enacted budget after October 1, 2012. Therefore this number is a “best guess” estimate.

ENVIRONMENTAL PROTECTION AGENCY
Office of Enforcement and Compliance Assurance
FY 2013 NPM GUIDANCE MEASURES APPENDIX

G/O/S*	ACS Code	Measure Text	Non-Commitment Indicator (Y/N)	State Performance Measure (Y/N)	Planning Target¹	National Target (FY 2013 Pres. Bud)
5	EJ01	HQ will analyze FY12 EJSEAT data to consider developing a baseline for a budget measure related to case initiations in areas with EJ concerns.	N	N	N	N
5	CAA04	The number of compliance evaluations (or other agreed upon compliance monitoring activities pursuant to the national dialogue on CAA compliance monitoring) to be conducted by the Regions at majors sources, 80% synthetic minors, and other sources (as appropriate). [Note: Region should break out evaluation projections by source classification and by compliance monitoring category (FCE, PCE, and Investigations).] In the comment section, each region should also provide the number of federal facility FCEs, PCEs and investigations. Projected investigations under this commitment are those investigations initiated by the Regions for the air enforcement program outside of the National Enforcement Initiatives, and identified by the air program (e.g., MACT, NSPS).	N	N	N	N
5	CAA06	Ensure that delegated state, tribal and local agencies implement their compliance and enforcement programs in accordance with the CAA CMS and have negotiated facility-specific CMS plans in place. The Regions are to provide the	N	N	N	N

¹ See measures text for each ACS commitment for specific expectations.

		number of FCEs at majors and 80% synthetic minors to be conducted by individual state/local agencies to demonstrate program implementation consistent with CMS. However, if a delegated agency negotiates with a Region an alternative CMS plan or alternative activities (pursuant to the CAA CMS national dialogue), this commitment should reflect the alternative plan. [Note: Break out evaluation and activity projections (e.g., FCEs; PCEs included in alternative plan) by source classification]. Prior to approving an alternative plan, Regions should consult with the Office of Compliance (OC) and provide OC with information on how the state, tribal or local agency compliance monitoring air resources will be redirected and the rationale for making the change.				
5	CWA07	By December 31, 2012, provide to Headquarters a specific NPDES Compliance Monitoring Strategy (CMS) plan for each authorized state in the Region, targeting the most significant sources with potential to impact water quality. The plan should provide universe information for the CMS categories; sub-categories covered by the CMS and combined EPA and state expected accomplishments for each category and subcategory. The plan should identify trade-offs made among the categories utilizing the flexibilities in the 2007 NPDES CMS policy and any amendments or further guidance as a result of the national dialogue on expanding the range of activities to be counted as compliance monitoring under the NPDES CMS. At the end of the year, provide for each state a numerical report on EPA and state inspection plan outputs, by category and subcategory. To increase the transparency of NPDES inspection data, OECA will work with EPA Regions and state associations to develop formats for releasing inspection data on CMS implementation performance on a state-by-state basis.	N	N	N	N
5	SDWA02	During FY 2013, the primacy agency must address with a formal enforcement action or return to compliance the number of priority systems equal to the number of its PWSs that have a score of 11 or higher on the July 2012 ETT	N	N	N	N

		report. State, territory and tribal breakouts shall be indicated in the comment field of the Annual Commitment System.				
5	RCRA01	Project by state, and Indian Country where applicable, the number of operating non-governmental TSDFs, to be inspected by the Region during the year. Regions must commit to inspect at least two (2) TSDFs in each state or Indian country unless OECA approves a deviation from this requirement. For example, deviations are given for states with small universes where it might not make sense for a Region to inspect two TSDFs per year. Financial responsibility is an important component of the RCRA core program and evaluating compliance with 40 CFR Parts 264/265 Subpart H should be included as part of the inspection of each TSDF (although such evaluations do not have to occur at the same time nor be conducted by the same people who conduct the field inspections). If a Region determines that there are unique circumstances in the Region or with a particular TSDF, the Region may contact Headquarters to discuss undertaking a detailed evaluation of compliance with 40 CFR Parts 264/265 Subpart H at another TSDF.	N	N	N	N
5	RCRA01.s	Project by state the number of operating TSDFs to be inspected by the state during the year. Note: Only one inspection per facility counts towards this coverage measure. The RCRA CMS establishes minimum annual inspection expectations for TSDFs: The inspections for RCRA01 and RCRA01.s should be CEIs. CEIs include evaluating compliance with the financial assurance requirements, 40 CFR Parts 264/265 Subpart H. Financial responsibility is an important component of the RCRA core program and should be included as part of the inspection of each TSDF (although the financial responsibility reviews do not have to occur at the same time nor be conducted by the same people who conduct the field inspections).	N	N	N	N

5	RCRA03	Inspect each operating TSDF operated by states, local, or Tribal governments.	N	N	N	N
5	RCRA02	Project by state and Indian Country, the number of LQGs, including those at federal facilities, to be inspected by the Region during the year. Each Region must commit to inspect at least six (6) LQGs in each state, and 20% of the region's LQGs universe in Indian Country, unless OECA approves a deviation from this requirement. For example, deviations are given for states with small universes where it doesn't make sense for a Region to inspect 6 LQGs per year or 20% of the Region's LQG universe in Indian country. Regions should select at least 2 of the Region's total LQG inspections at facilities described in the high priority section as areas of emerging environmental concern. Regions may work with OECA to coordinate these inspections, including whether the inspection will be conducted at a TSDF or LQG. In the Comment Section, provide the number of federal facility LQG inspections.	N	N	N	N
5	RCRA02.s	Project by state the number of LQGs to be inspected by the state during the year. At least 20 percent of the LQG universe should be covered by combined federal and state inspections unless an alternative plan is approved under the RCRA CMS.	N	N	N	N
5	OSRE-04	Regions must commit to inspect at least one (1) RCRA corrective action financial assurance instrument per state, with at least 50% being financial test or corporate guarantee reviews. Where the submission is noncompliant, take appropriate enforcement action to address noncompliance (e.g., notice of violation). Or, where appropriate, work with the state to ensure appropriate action is taken to address noncompliance. If possible, return facility to compliance by end of fiscal year.	N	N	N	N

5	TSCA01	Project the total number of FY2013 TSCA inspections. In the comment field of the Annual Commitment System (ACS), the Region shall break out the number of projected inspections by TSCA program area (LBP, New and Existing Chemicals, formaldehyde,). <i>Note: For the reasons discussed in the executive summary, the LBP component of this TSCA ACS commitment (TSCA 01) will serve as OECA's FY 2013 measure of compliance work being done to protect children's health.</i>	N	N	N	N
5	TSCA02	Report other compliance monitoring activities at the end of the year; and break-out the description of other such activities by TSCA program area. (See the CMS and the future outcomes of the compliance monitoring national dialogue for more details).	N	N	N	N
5	FIFRA-FED1	Project regional (federal) FIFRA inspections. Each Region should conduct a minimum of ten (10) FIFRA inspections. In the Comment Section, provide the number of federal facility inspections.	N	N	N	N
5	OSRE-01	Reach a settlement or take an enforcement action by the start of remedial action at 99% of non-federal Superfund sites that have viable, liable parties.	N	N	N	N
5	OSRE-02	Address all unaddressed costs in Statute of Limitations cases for sites with total past Superfund costs equal to or greater than \$200,000 via settlement, referral to DOJ, filing a claim in bankruptcy, or where appropriate write-off.	N	N	N	N
5	HQ-VOL	Volume of Contaminated Media Addressed (VCMA). As part of the Goal 5 sub-objective, Support Cleaning up Our Communities, the following is the GPRA target: <i>By 2015, obtain commitments to clean up 1.5 billion cubic</i>	N	N	Y (See narrative.)	N

		<p><i>yards of contaminated soil and groundwater media as a result of concluded CERCLA and RCRA corrective action enforcement actions.</i></p> <p>OECA has reported VCMA for contaminated soil and groundwater media as separate measures in its annual results since 2004. The GPRA target is a national target and regions are not required to post commitments in ACS.</p>				
5	EPCRA 01	Conduct at least four (4) EPCRA 313 data quality inspections (or other agreed upon compliance monitoring activities pursuant to the national dialogue on EPCRA 313 compliance monitoring).	N	N	N	N
5	EPCRA 02	Conduct at least twenty (20) EPCRA 313 non-reporter inspections (or other agreed upon compliance monitoring activities pursuant to the national dialogue on EPCRA 313 compliance monitoring).	N	N	N	N
5	FED-FAC05	Each Region must conduct ten (10) federal facilities inspections primarily to support national Integrated Strategy areas, which include stormwater, federal underground storage tanks (UST), RCRA corrective action sites, vulnerable communities and inspections associated with the disposal of unneeded federal real estate. Three exploratory categories from FY 2012 -- inspections at Government Owned/Contractor Operated/Government Owned/Private Operated (GOCO/GOPO) facilities, for HCFCs/CFCs at federal installations and related to energy extraction on federal lands – will also count. These 10 inspection commitments can be achieved through any combination of single media or multimedia inspections, with the following limitations: (1) a maximum of two UST inspections can count toward this goal; (2) a maximum of four vulnerable community inspections can count toward this goal; and (3) for any multimedia inspection conducted, it shall count as up to four inspections toward this goal if up to four of the individual inspections support the Integrated Strategies	N	N	N	N

		and/or official Regionally-designated priorities. Further, (4) up to four official Regionally-designated priorities can count toward the commitment, if the Region determines that inspections up to that number are more desirable than the same number of Integrated Strategy inspections in the Region. Finally, all of these inspections may simultaneously satisfy inspection commitments required in any National Enforcement Initiative or other core program area.				
5	SRF01	Develop a plan to complete all Round 3 state reviews by the end of FY 2016 and submit it to OC by October 30, 2012. Before the plan is due, OC and OWM will have a discussion with each Region about their plan. Subsequently, OC and OWM will hold annual discussions with Regions to establish whether any modifications to the schedules are necessary. Identify the states where Round 3 reviews will be conducted in FY 2013. Conduct all Round 3 SRF reviews of state CAA, CWA, and RCRA enforcement programs scheduled for FY 2013. Conduct all CWA reviews using the integrated CWA-NPDES program oversight process (permit and enforcement reviews). Review existing MOAs as part of the CWA-NPDES review process in light of the OW/OECA criteria for MOA review and checklist to be developed in FY 2012. Ensure that MOAs are updated as needed.	N	N	N	N

**Goal/Objective/Sub-Heading*

Explanation of Changes between FY 2012 and FY 2013 NPM Guidance

Office of Enforcement and Compliance Assurance

Instructions

Change from FY 2011 Guidance Document	Reason for Change	Location of Information
<i>Briefly describe the significant changes from the FY 2012 guidance and specify whether it is a deletion, addition, or modification. Changes to measures may be grouped.</i>	<i>Provide the reason for the change and indicate whether the change is in response to an Agency initiative, internal process or comment on the draft guidance (e.g., budget decisions, Administrator's priorities, regulation, initiative, result of measures review, etc.).</i>	<i>Identify where in the document the new or modified information can be found (by page number and section).</i>

Template

Change from FY 2012 Guidance Document		Reason for Change	Affected Pages and Sections
Priorities	Changes to priorities and strategies are inter-related in certain instances. To avoid unnecessary repetition, please see strategy changes highlighted below.	See below.	
Strategies	Next Generation Compliance: OECA has identified a critical new investment area aimed at instituting next generation compliance practices to build 21 st century technical capabilities and efficiencies in assuring compliance. OECA and the Regions are supporting the Agency's Next Generation Compliance by promoting electronic monitoring and reporting to improve targeting and transparency and advancing new monitoring technologies to identify violations impacting public health and harming the environment. For consent decrees that include a requirement to conduct a performance test(s), Regions should seek having electronic copies of required performance test reports submitted to the Agency through the Electronic Reporting Tool (ERT)	This is consistent with EPA's desire to better address large regulated universes with approaches that go beyond traditional inspection and enforcement activities.	See page 13.

	when feasible.		
	<p>Clean Water Act Action Plan: OECA, together with EPA regions, states and tribes with program delegation, and the Office of Water, continues to implement the CWA Action Plan (“the Action Plan”) issued in October 2009. Pursuant to the Action Decision Document, issued in May 2011, EPA is making four fundamental changes to revamp the NPDES permitting, compliance and enforcement program to better address today’s serious water quality problems.</p>	<p>The proposed changes take into account work already accomplished and continuing improvements to better address today’s water quality problems.</p>	<p>See pages 34-36.</p>
	<p>Integrated Municipal Stormwater and Wastewater Planning Approach: EPA engaged stakeholders to develop and implement an Integrated Municipal Stormwater and Wastewater Planning Approach Framework to address municipalities' numerous CWA obligations.</p>	<p>This approach will allow municipalities to prioritize and sequence CWA requirements in a manner that addresses the most pressing public health and environmental protection issues first, while maintaining existing regulatory standards that protect public health and water quality. All or part of an integrated plan may be incorporated into the remedy of enforcement actions and/or into NPDES permits. After the details of the development and implementation of this Approach are finalized, OECA will decide what modifications to the National Municipal Enforcement Initiative are necessary to promote and implement it. More detail about the changes and their implications will be made available soon in follow-up to a series of integrated planning workshops held with states, local governments and environmental groups.</p>	<p>See page 16.</p>
	<p>Inspector Credentials: In FY 2013, regions will be required to re-credential many of their federal inspectors.</p>	<p>EPA Order 3510 requires that each EPA office which prints and distributes credentials (i.e. federal credentials issued to state and tribal</p>	<p>See pages 16, 29, 45, 48, 53, 65, 75.</p>

		inspectors to conduct inspections on EPA's behalf) must conduct an annual inventory including an annual physical possession check of 10% of the credentials. OECA will work the regions to establish a schedule and necessary steps for the re-credentialing of inspectors.	
	Compliance Monitoring National Dialogue: OECA will be holding a national dialogue on how to expand the range of compliance monitoring activities to be credited under media Compliance Monitoring Strategies (CMS).	This is necessary as the regulated universe continues to grow while federal and state resources become scarcer. Traditionally, on-site compliance inspections and investigations have been the primary means for providing coverage of the regulated universe. There are many additional activities regulatory agencies do to monitor facility-level compliance that can and should be considered along with inspections and investigations as contributing to our coverage goals. EPA Regions, states and tribes will be invited to participate in this national dialogue in 2012, and should be ready to implement the outcome of this discussion in 2013.	See page 17.
	Budget Challenges for FY 2013: Our top priority is ensuring that we address the most important violations posing a threat to public health or the environment. It is also essential that we invest in new ways to improve the effectiveness of our work, such as monitoring, electronic reporting, and innovative enforcement approaches. Maintaining or even increasing our investment in these top priorities during lean budget times requires us to make difficult choices, and to work in partnership with States and Tribes to ensure that limited funds are focused on those compliance and enforcement initiatives that will deliver the greatest benefit to people's health.	Maintaining or even increasing our investment in these top priorities during lean budget times requires us to make difficult choices, and to work in partnership with States and Tribes to ensure that limited funds are focused on those compliance and enforcement initiatives that will deliver the greatest benefit to people's health.	See pages 13-14, 31-33, 40, 49, 54, 64, 68, 77, 80 and 86.

	<p>In order to ramp up work on these priorities in a time of declining budgets, we necessarily will have to cut back in other areas in FY13. In some cases, progress made in the past allows for reduced effort today. In other programs, new electronic tools make it possible to do more with less, or we can set a higher threshold for taking federal enforcement. In some cases, we will, out of necessity, need to consider scaling back on important work. However, in every case we will retain our capacity to address the most serious national problems, and will also continue to respond to the most egregious cases using criminal enforcement authorities, where that is appropriate.</p> <p>Although all NPM Guidance documents are being finalized today (per the Agency's annual schedule), we are still in the process of discussing the content and schedule for the budget adjustments portion of the Guidance. With the participation of all the Regions and OECA Offices, we are thinking through the issues associated with implementation of these reductions, and considering the input from States and Tribes. Discussions of the budget adjustment plans will continue for the next several months.</p> <p>Some changes to the February 10, 2012 proposed OECA NPM Guidance have already been made, based on early comments from the States and Regions. For example, due to state concerns, we have decided to retain at least a limited national presence in all of the adjustment areas and are no longer proposing to completely disinvest in any programs. Some of the budget adjustments outlined in this final guidance may be further revised as we continue work on implementation plans.</p>		
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	<p>So that we can transition to the changed profile given budget adjustments, this guidance requests that Regions not initiate new work (e.g., inspections) in the areas under consideration for reduction, without prior consultation with senior managers in Headquarters. There will be more discussion on the consultation process before FY2013. Given the importance of compliance monitoring and enforcement work, it will be critical to maintain travel funds for those purposes, and to scale back on other types of travel instead where Regional travel funds are limited.</p>		
	<p>Environmental Information Exchange Network: The NPM guidance provides updated information on the Environmental Information Exchange Network. It also invites the provision of examples to the Electronic Reporting Task Force of experiences in moving from paper to electronic reporting.</p>	<p>To reduce burden, improve compliance, expand the information available to the public about pollution that affects them, and improve the ability of EPA, states and tribes to implement environmental programs, the Agency has commenced a comprehensive initiative to convert from paper reporting to electronic reporting. The NPM guidance discusses the focus of this initiative in two main areas. The Agency is also interested in learning from states and tribes about successes and challenges in converting from paper reporting to electronic. If a state or tribe would like to share information with the Electronic Reporting Task Force, please contact David Hindin (OECA) and Andy Battin (OEI) for more information.</p>	<p>See pages 35 and 41.</p>
	<p>Environmental Justice (EJ): Expanded narrative addressing children's health and screening of civil and criminal enforcement cases for EJ concerns.</p>	<p>The narrative was expanded to further address children's health. Also, the narrative addresses OECA's evaluation and post-pilot implementation of the <i>Technical Directive: Reviewing EPA Enforcement Cases for Potential Environmental Justice Concerns and</i></p>	<p>See pages 18 -22.</p>

		<i>Reporting Findings to the ICIS Data System.</i>	
	Toxic Substance Control Act (TSCA) Compliance Monitoring Strategy: Starting in FY2013, the One TSCA approach includes activities in each TSCA focus area not subject to FY 2013 disinvestment.	One-TSCA means that each Region is expected to use all available compliance monitoring capabilities (within all relevant offices in the Region, at Headquarters, and among participating states) to address the Region's most significant TSCA challenges, while sustaining essential capacity in all of its TSCA program areas not subject to disinvestment.	See page 15.
	EPA Direct Implementation in Indian Country: Regional direct implementation in Indian country includes applying the various compliance monitoring strategies and enforcement policies, and <i>OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy (January 17, 2001)</i> . <i>OECA's Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy</i> contains procedures for consultation with federally-recognized tribes in the civil compliance monitoring and enforcement context and contains threshold criteria for EPA's consideration of enforcement actions. The threshold criteria are not intended to, and should not, result in a lesser degree of human health and environmental protection in Indian country than elsewhere in the U.S.	What is described is not a change in approach from FY 2012. However, OECA thought it was important to note in the NPM Guidance that EPA regional direct implementation in Indian country includes applying the various compliance monitoring and enforcement policies.	See pages 30, 44, 56, 65 and 75.
	CAA Section: Updates to activities for regions, states, tribes and local agencies.	Necessary changes to reflect focus of FY 2013 activities, including national dialogue on compliance monitoring and support of next generation compliance activities.	See pages 25-33.

	CWA Section: Updates to activities for regions and states.	Necessary changes to reflect focus of FY 2013 activities, including but not limited to preparing for implementation of proposed NPDES electronic reporting rule.	See pages 34-45.
	SDWA Section: Updates to activities for regions and states.	Necessary changes to reflect focus of FY 2013 activities.	See pages 45-49.
	RCRA Section: Updates to activities for regions and states.	Necessary changes to reflect focus of FY 2013 activities.	See pages 50-57.
	TSCA Section: Updates to activities for regions and states.	Necessary changes to reflect focus of FY 2013 activities.	See pages 57-66.
	FIFRA Section: Updates to activities for regions, states, tribes.	Necessary changes to reflect focus of FY 2013 activities.	See pages 66-76.
	CERCLA: Updates to activities for regions.	Necessary changes to reflect focus of FY 2013 activities.	See pages 76-79.
	Criminal Enforcement	Necessary changes to reflect focus of FY 2013 activities.	See pages 80-82.
	Federal Activities	Necessary changes to reflect focus of FY 2013 activities.	See pages 82-83.
	EPCRA 313 Section: Updates to activities for regions.	Necessary changes to reflect focus of FY 2013 activities.	See pages 84-85.
	EPCRA 311/312 Section: Updates to activities for regions.	Reflects change in focus for EPCRA 311/312 program.	See page 86.
	CERCLA 103 and EPCRA 304 Section: Updates to activities for regions.	Necessary changes to reflect focus of FY 2013 activities.	See page 86.

	Federal Facilities Section: Updates to activities for regions.	Necessary changes to reflect focus of FY 2013 activities.	See pages 87-89.
	State Review Framework: Updates to activities for regions.	Necessary changes to reflect focus of FY 2013 activities.	See page 90.
Annual Commitment Measures	CAA 07: Deleted commitment CAA 07 which appeared in OECA's final FY 2012 NPMG but was subsequently discontinued in follow-up to discussions with regions. This addressed the reporting of Minimum Data Requirements (MDRs) in the national data system AFS.	The regions are still working to ensure the entry of 100% of MDRs in AFS. The importance of this activity has not changed. But this is part of the core program and it was deemed unnecessary to have an ACS measure.	Deleted from page 31.
	RCRA 04 Subtitle C Program: Deleted commitment RCRA 04 for financial assurance. However, the NPM Guidance emphasizes that financial assurance compliance evaluations should be part of any Compliance Evaluation Inspection.	Financial responsibility was an OECA National Enforcement Priority from 2005-2010. In FY 11 and FY 12, OECA used an ACS commitment to ensure continued focus on financial assurance compliance monitoring as it transitioned from a priority back to a core program function. OECA believes that transition is now successfully complete and does not see a continued need for RCRA04.	Deleted from page 54.
	CWA09: Deleted commitment CWA 09 which reads as follows: Regions should submit summaries of the collaborative EPA/state annual work planning process addressing NPDES permitting, compliance monitoring, and enforcement activities, including work-sharing, to the Office of Compliance and the Office of Wastewater Management by October 31, 2011, for FY 2013 activities.	Regions will continue to conduct collaborative EPA/state annual work planning processes addressing NPDES permitting, compliance monitoring, and enforcement activities, including work-sharing. It was deemed unnecessary to have an ACS commitment on this.	Deleted from page 42.
	CWA 10: Deleted CWA 10 which read as follows: Regions should focus their CWA enforcement work towards meeting the national target of 37% for concluding federal judicial and	The Goal was to increase the percentage of our enforcement actions taken in waters that do not meet water quality standards. The FY 2011 target was 37%, compared to an FY 2009	Deleted from CWA section.

	administrative enforcement actions resulting in a reduction of pollutants that pertain to facilities discharging into waters that do not achieve water quality standards. The Regions should report their data per the November 2010 guidance issued by OECA, and any subsequent updates issued for FY2012.	baseline of 32%. In FY 2011, EPA focused approximately 60% of its water quality enforcement actions to facilities discharging to waters that do not meet water quality standards. Given this achievement, the Agency has chosen another area of focus (Electronic Reporting) for its FY 2012-2013 Priority Goal.	
	EJ01: Headquarters (HQ) added this commitment which involves the analysis of FY 2012 EJ SEAT data by HQ.	Headquarters believes it's important to analyze FY 12 EJSEAT data to consider developing a baseline for a budget measure related to case initiations in areas with environmental justice (EJ) concerns.	Added to page 20.
	TSCA 01: The Lead Based Paint (LBP) component of OECA's TSCA 01 ACS commitment, which focuses on inspections, will serve as OECA's FY 2013 measure of compliance work being done to protect children's health. TSCA 01 was an FY 2012 measure, but identification of the LBP component as a children's health measure is new.	Monitoring and enforcement efforts to promote compliance with LBP rules, particularly the Renovation, Repair and Painting (RRP) Rule, advance the goal of eliminating and preventing LBP hazards, which are the primary single cause of childhood lead poisoning. These efforts support the Agency's mission to eliminate childhood lead poisoning.	See page 60.
	TSCA02: Added commitment TSCA02, which reads as follows: Report other compliance monitoring activities at the end of the year; and break-out the description of other such activities by TSCA program area. (See the CMS and the future outcomes of the compliance monitoring national dialogue for more details).	See explanation next to Compliance Monitoring National Dialogue on the bottom of page #	See page 60.
	CAA04, CAA06, RCRA 01, 01.s, 02, OSRE 04, CWA07, FIFRA Fed1, Fed-Fac05, SRF-01: Language was modified (slightly in some instances) under each of these ACS commitments.	Language was modified (slightly in some instances) to reflect focus of FY 2013 activities.	See pages: - (CAA04) 29, - (CAA 06) 31, - (CWA07) 42, - (RCRA01, 01.s) 51,

			<ul style="list-style-type: none"> - (RCRA02 & OSRE04) 54, - (FIFRA Fed1) 70, - (Fed Fac 05) 89 and - (SRF01) 90.
Contacts	Maureen Lydon		