



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 10 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revised Procedures for Determining Level of Federal Facility Enforcement Office (FFEO) Involvement in Formal Regulatory Enforcement Cases

FROM: David J. Kling, Director
Federal Facility Enforcement Office 

TO: EPA Regional Enforcement Directors
EPA Regional Counsels
EPA Regional Enforcement Coordinators

Introduction

This memorandum revises the procedures for determining the level of involvement of OECA's Federal Facilities Enforcement Office (FFEO) in Regional formal regulatory enforcement cases involving federal agencies or facilities.¹ These new streamlined procedures are intended to clarify expectations and reduce the coordination burdens on EPA's Regional federal facility enforcement officials, especially related to small and routine cases. The procedures were developed over the past year and after consultation with the Regions.

Definition of National Significance as it Pertains to Federal Facilities

OECA Assistant Administrator Cynthia Giles stated in her March 5, 2013, Memorandum *Efforts to Improve the Efficiency of Regulatory Enforcement Cases*, that since "all actions against federal agencies are nationally significant, the Regions should consult with [FFEO] regardless of the size of the bottom-line penalty" in regulatory enforcement cases. This Memorandum clarifies and revises the expected level of coordination between the Regions and FFEO on such federal facility regulatory cases.

Although federal facility enforcement cases are, and will continue to be, considered nationally significant, we are redefining when and to what extent an enforcement action triggers FFEO involvement to improve the efficiency of EPA's federal facility enforcement actions. First, the new procedure will clarify for the Regions whether FFEO expects notification, consultation, or

¹ This memorandum, in some respect, is a companion to the OECA Office of Civil Enforcement's 5/12/2015 memorandum, "Revised Consolidated Procedures for Regional and Headquarters Coordination on Regulatory Enforcement Cases Involving Nationally Significant Issues (NEIs)," which also addresses national significance in the private sector but does not apply to federal facility cases.

concurrence instead of the current “one size fits all” consultation if any enforcement action involves a federal agency or facility. Second, it will reduce the burden on Regional enforcement staff by allowing the Regions to provide only summary information when notification is all that is required. Third, by identifying what criteria trigger a consultation (or concurrence), FFEO will be able to focus on cases that are more likely to affect the national program. Finally, Regions, at their discretion, will still be able to request greater FFEO involvement in particular enforcement actions which do not trigger consultation or concurrence.

New Procedures for Determining the Level of FFEO Involvement

The Regions should continue to notify FFEO of all regulatory enforcement cases that involve federal agencies or facilities, as required by OECA policy. However, *now notification can be accomplished simply by the Region filling out a writable pdf version of the “Standard Form to Specify the Level of Federal Facility Enforcement Office Involvement in Regulatory Enforcement Cases,” provided in Attachment 1, and e-mailing the form to its FFEO Regional Liaison, listed in Attachment 2.*

The one-page notification form will be used to identify whether FFEO should be consulted under the following new criteria:

- The proposed penalty is greater than \$50,000, or
- The proposed action involves more than one region, or
- The proposed action is likely to cause interest from outside parties (e.g., press, Congress, community groups, the public), or
- The proposed action could be precedent setting, or
- A waiver is needed from the Department of Justice, or
- The Region is issuing an imminent or substantial endangerment order or substantial hazard order (e.g., RCRA § 3013, RCRA § 7003, and SDWA § 1431).

For cases with a proposed penalty greater than \$500,000, FFEO concurrence will be required. (We have few cases which rise to this penalty level.) All other cases would require only notification of the proposed action via the form – unless FFEO opts-in for consultation or concurrence upon reviewing the standard form or as new information becomes available. We also ask that Regions email the form to their FFEO contact at the earliest possible stage of the case so the review and involvement can be quickly determined and agreed upon.

The form does not need to be signed or emailed by Regional managers or directors; instead, a case team representative of the Region’s choosing may send the form to FFEO’s Regional Liaison. FFEO asks the Regions to engage their Federal Facility Program Manager (FFPM) in this process, perhaps engaging the FFPM to fill out the “Standard Form to Specify the Level of Federal Facility Enforcement Office Involvement in Regulatory Enforcement Cases.”

Conclusion

While FFEO expects to be notified of all formal federal facility regulatory enforcement actions, FFEO consultation should be reserved for only those cases that may affect the national program

unless the Region requests it. Notification can be accomplished easily by use of the attached form (which will be posted on FFEO's Toolbox SharePoint site). Thanks to our Regional colleagues who have contributed to this new approach. If you have any questions or concerns, please contact FFEO's Kathleen Doster at (202) 564-2573 or doster.kathleen@epa.gov.

Attachments

cc: Cynthia Giles, OECA Assistant Administrator
Lawrence Starfield, OECA Principal Deputy Assistant Administrator
Shari Wilson, OECA Deputy Assistant Administrator
Susan Shinkman, Director, OECA Office of Civil Enforcement (OCE)
Rosemarie Kelley, Deputy Director, OECA OCE
Lisa Lund, Director, OECA Office of Compliance (OC)
Betsy Smidinger, Deputy Director, OECA OC
Cyndy Mackey, Director, OECA Office of Site Remediation Enforcement (OSRE)
Rafael DeLeon, Deputy Director, OECA OSRE
Erin Miles, OECA Chief of Staff
Lauren Tozzi, OECA Special Assistant
Charlotte Bertrand, Acting Director, OSWER Federal Facility Restoration and Reuse Office
OECA FFEO Managers and Staff
EPA Regional Federal Facility Program Managers, Regions 1-10

Standard Form to Specify Level of Federal Facility Enforcement Office Involvement in Regulatory Enforcement Cases

Case Name: _____

Location of facility: City: _____, State _____, Region _____

Status of case (check all that apply):

Prefiling, in development _____
Settlement negotiations ongoing _____
Other (describe) _____

Primary Violations (narrative or listing of sections):

Primary Contact Person (name, phone number, email address):

Other Regional legal and program staff contacts (names, phone numbers, email addresses)

Nature of Federal Facility Enforcement Office involvement/assistance (check all that apply):

Yes No

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Is the proposed penalty greater than \$50,000? |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the proposed action involve more than one Region? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the proposed action likely to cause interest from outside parties?
(e.g. press, Congress, the public) |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the proposed action precedent setting? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is a waiver needed from the Department of Justice? |
| <input type="checkbox"/> | <input type="checkbox"/> | Does the proposed action involve an imminent or substantial endangerment order
or substantial hazard order (e.g., RCRA § 3013, RCRA § 7003, and SDWA §
1431)? |

If you answered yes to any of the above questions, you should check the consultation box. If the proposed penalty is greater than \$500,000, you should check the concurrence box. FFEO may opt-in for consultation or concurrence when it reviews this form or as new information becomes available. For example, FFEO may need to change its role if a settlement is proposed that involves a SEP which needs OECA or FFEO consultation or concurrence.

Notification is satisfied by this form.

- | | | | | | |
|--------------------------|--|--------------------------|--------------|--------------------------|-------------|
| <input type="checkbox"/> | Notification | <input type="checkbox"/> | Consultation | <input type="checkbox"/> | Concurrence |
| <input type="checkbox"/> | Have you discussed this case with your regional Federal Facility Program Manager (FFPM)? | | | | |
| <input type="checkbox"/> | Have you carbon copied the FFPM in the e-mail conveying this form? | | | | |

Date: _____