



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

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OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Best Practices for Compliance and Enforcement-Related Information Requests

FROM: Rosemarie Kelley, Director
Office of Civil Enforcement

A handwritten signature in blue ink that reads "Rosemarie Kelley".

TO: Regional Counsel
Regional Enforcement Directors and Program Directors
Regional Enforcement Coordinators
Office of Civil Enforcement Division Directors

Environmental statutes provide EPA with broad authority to investigate whether entities are complying with environmental laws. This authority to request information is particularly important when investigating whether a violation occurred. If a violation has occurred, then the information that EPA gathers forms the basis for measures to bring facilities back into compliance with the law, thereby protecting public health and the environment.¹

To ensure the effective and efficient use of this tool, we have collected best practices from the EPA Regions and the Office of Civil Enforcement (OCE) for the use of information requests for compliance- and enforcement-related activities. The use of these best practices should create a consistent practice among the Regions and OCE Divisions which will improve certainty for the regulated community. We recommend that Regions and OCE Divisions consider the attached best practices for implementation -- to the extent that they are not already doing so -- to help ensure that:

- Information is obtained using the most effective and efficient method including informal requests, as well as formal requests for information;
- transaction costs for both the recipient and the government are minimized, including tailoring the request to the information that may reasonably be required;
- the tone of the request is appropriate to the circumstances;
- the letter clearly communicates what is requested, provides a clear process for responding, and explains that the recipient has a reasonable opportunity to ask questions about the request; and

¹ This memorandum does not address the use of information requests when developing regulations.

- recipients have a reasonable amount of time to respond.

This memorandum supersedes the memorandum issued by Susan Shinkman, Director, Office of Civil Enforcement, *Interim Procedures for Issuing Information Requests Pursuant to Clean Air Act § 114, CWA § 308 and RCRA § 3007* (May 31, 2017), which put in place an interim requirement for OECA Headquarters prior review of information requests that raised certain issues (e.g., testing requirements or State concerns). OCE has reviewed a significant number of information requests since that memorandum was issued and has identified best practices. With the implementation of these best practices, I have concluded the extra level of review required by the aforementioned Susan Shinkman memo is no longer necessary.

This memorandum does not supersede guidance issued by David Hindin, Director, Office of Compliance, *Interim Guidance on Required Reporting of Compliance Monitoring of Information Requests in ICIS* (May 15, 2017), requiring entry of certain minimum data into ICIS after issuance of an information request.² It also does not supersede the memorandum issued by Eric Schaeffer, Director, Office of Regulatory Enforcement, *Enhancing the Effectiveness of Information Requests in Regulatory Enforcement Matters* (July 3, 2001) which outlined several issues to consider when issuing compliance- and enforcement-related information requests under all statutory authorities.³ Those memoranda continue to provide important direction for the tracking of data and effective use of information requests. In addition, this memorandum is not intended to address how EPA will work with states on joint planning for compliance assurance work in authorized programs, which is discussed in the memorandum issued by Susan Parker Bodine, *Interim Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States* (January 22, 2018).⁴

This memorandum and the attached best practices have been developed for EPA employees and are intended solely for internal management purposes. They do not create any rights, substantive or procedural, enforceable at law. EPA may periodically revise this memorandum or the attached best practices to make improvements and/or to reflect changes in EPA policy. EPA reserves the right to act at variance with this procedure. Varying from this procedure does not affect the validity of EPA's use of the information obtained.

This memo is effective immediately. If you have any questions or would like to suggest additional best practices, please contact Lauren Kabler at (202) 564-4052 or Kabler.Lauren@epa.gov.

Attachment

² See, <https://intranet.epa.gov/oeca/oce/io/documents/interiminformationrequesttrackingguidance.pdf>.

³ See, <https://intranet.epa.gov/oeca/oce/io/documents/enhancingtheeffectivenessofinformationrequestsinregulatoryenforcementmatters.pdf>.

⁴ See, <https://www.epa.gov/compliance/interim-oeca-guidance-enhancing-regional-state-planning-and-communication-compliance> .

cc: Susan Bodine
Larry Starfield
Patrick Traylor
David Hindin
Amy Porter

APPENDIX: Best Practices⁵

1) Obtain Information Using the Most Effective and Efficient Method

Gathering information through informal means can be an effective and expeditious method to obtain needed information. Regions and OCE Divisions frequently find that they can successfully and efficiently gather compliance information without the use of a formal information request (*e.g.*, by telephone or email prior to or after an inspection or gathering copies of facility records during inspections).

Regions and OCE Divisions should balance that approach with a consideration of the benefits of gathering information formally. Gathering documentation through a formal information request may avoid the potential for confusion and misinterpretation or delays in obtaining needed information. Formal information requests can also enhance the quality of the evidence that is collected and ensure the appropriate management control over the scope and types of information requested from the facility.

Regions and OCE Divisions should weigh these factors on a case-by-case basis in deciding how best to obtain needed information.

2) Minimize Transaction Costs

Both the government and the recipient benefit from best practices that minimize transaction costs. Carried out appropriately, these best practices also maintain or improve the government's ability to acquire relevant information. Therefore, they should always be *considered* when planning an information request.

Use existing sources of information wherever possible to ensure efficient use of resources. Determine whether existing information (inside or outside the Agency) eliminates the need to ask for certain information. For example, information such as ownership, finances, compliance history, or permit terms is often available from other sources. Sources include U.S. Securities and Exchange Commission reports, mandated reporting to EPA and/or states (*e.g.*, Clean Water Act §311 pollution reports documenting a spill), EPA's compliance data system (ICIS) or other EPA media systems/programs, and state files.

Do not ask for more information than you reasonably expect to use; consider a phased approach. To minimize undue burden on the recipient and to reduce the amount of extraneous information EPA would receive and process, it is important to consider whether each piece of information requested (or each question) is truly necessary. When a drafter is uncertain how much information is needed, consider using a phased approach rather than erring on the side of a broader request. In a phased approach, the initial information request is used to pose threshold questions. The responses to these initial questions should then be reviewed to determine whether additional information is needed. If so, subsequent

⁵ Note that the sample language provided is merely illustrative and need not be used in all cases. Further, as stated in the cover memorandum, EPA action at variance with these procedures does not affect the validity of EPA's use of the information obtained.

information requests should focus on these specific needs (e.g., a request for sampling based on results from the initial response). Of course, a phased approach would not be appropriate where there is a time-sensitive need for information to address compliance concerns.

Sample language:

- Phased information requests should state the following in the first request:
 - *EPA may seek additional information as a follow-up to this request.*
- Phased information requests should acknowledge the first response in subsequent requests:
 - *After reviewing the response provided by [insert recipient] to our limited initial request, we are now requesting more comprehensive information to assess compliance with the Clean Air Act. We are seeking this information on a phased basis between [insert months] of [insert year], as stated in the attached enclosure.*

3) Use Appropriate Tone

The context and the recipient of the letter should be considered when determining the appropriate tone. The type and size of the business, prior agency interactions, compliance history, the necessity for the EPA to receive the information in a short timeframe, and any potential threat to human health and/or the environment are all factors that could influence the information request's language and tone. For example, the letter should clearly refer to the statutory authority for issuing the information request, however, citation to statutory penalties for failure to respond is not always necessary or appropriate in all circumstances (e.g., you anticipate cooperation from the recipient).

This is not meant to suggest that information requests generally should not cite to the statutory penalty, but to reiterate that you should use your best judgment in deciding whether it is appropriate in all circumstances. For example, it may be appropriate to consider whether citation to statutory penalties is necessary in an initial request to a smaller entity that has little or no experience with EPA, particularly where the potential violations do not present a serious immediate threat. In this situation, if the smaller entity does not initially grasp the seriousness of the request, there is time to clarify our authority to assess penalties for a failure to respond.

Further, the tone of information requests should be polite, and should thank the recipient in advance for its cooperation.

Sample language:

- *EPA is also interested in information concerning the generation, storage, treatment, transportation, and disposal methods of such substances that have been or threaten to be released from the Site. EPA believes that you may possess information which may assist the Agency in its investigation of the Site.*
- *Thank you for your attention to this important matter.*

4) Clearly Communicate the Request, Process for Responding, and Opportunity to Ask Questions

The information request should be written as plainly as possible, including specifying EPA's preferred format for the response where appropriate, so that it is clearly understood by the recipient.

Sample language:

- *Please summarize and submit the requested information, in an electronic Excel spreadsheet if possible. Instructions and definitions are provided. For ease of organization, EPA is providing an electronic copy of an Excel worksheet for the responses to Requests 1 – 3.*
- *Please submit the laboratory bench sheets for all the sampling data requested.*
- *Please submit the documents requested, in a Portable Document Format (PDF) if possible.*
- *Requested information can be submitted in electronic format, where applicable.*

The time allowed to respond and the process for doing so should be stated clearly.

Sample language:

- *Please provide the information requested in the information request dated **[insert date]** by **[insert date]**.*
- *Please submit the requested information to: **[insert name, mailing address and email address]**.*
- *Please submit the requested information electronically if possible.*

The information request should always provide the name, title, and contact information of a person who can respond to, and/or meet with, the recipient to discuss any questions regarding the request.

Sample language:

- *If you have any questions, please do not hesitate to contact **[insert name, title, phone number and email address of program contact]** or have your attorney contact **[insert name, title, and email address of legal contact]** so we may clarify the request.*
- *Any technical questions regarding this request should be directed to **[insert name, title, phone number and email address]**. For legal matters, please email **[insert name, title, and email address]**.*

5) Provide a Reasonable Time to Respond

Short timeframes for response may impose additional cost burdens on recipients. The time allowed to respond to an information request should reasonably reflect the level of effort and time required to identify and gather the data requested. Because the level of effort cannot always be assessed ahead of time, the information request should notify the recipient that it can request more time or ask questions regarding the request. This language should facilitate an open dialogue. Enforcement staff should be responsive to reasonable requests for extensions of time to respond. However, when information is needed immediately, such as during an emergency response or where risk to human health and welfare dictate the immediate need for information, EPA may choose to exercise its statutory authority to request that the information be provided within a short time frame.

Sample language:

- *Please do not hesitate to contact us if you have questions regarding this request or concerning the timeframe in which to respond.*
- *Please do not hesitate to contact us if you would like the EPA to consider an extension to respond to this request.*