



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

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

July 22, 2020

Dear Partner Agencies:

The purpose of this letter is to assure you that the U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance (OECA) will work with states, tribes, territories, and local agencies (hereafter referred to collectively as "partner agencies") to adjust inspection¹ commitments due to the COVID-19 public health emergency. This information applies to inspection commitments under those compliance monitoring programs that partner agencies are authorized to implement and that OECA oversees, as well as inspection commitments made as part of State and Tribal Assistance Grants under the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act. The recommendations in this letter are not intended to conflict with direction provided by the two compliance monitoring programs overseen by other EPA National Program Managers (NPMs) (i.e., Underground Storage Tank and Underground Injection Control programs).

We share a common goal of protecting the health and safety of inspectors, the regulated community, and the public. As we work together to navigate our inspection field work during these challenging times, OECA will provide additional flexibility to assist partner agencies in meeting inspection commitments.

We recommend our partner agencies perform inspections, when it is safe to do so, consistent with their priorities and applicable OECA program priorities. When a partner agency's planned on-site inspections to meet applicable OECA program priorities cannot be performed due to COVID-19, OECA and EPA's regional Enforcement and Compliance Assurance Divisions (ECADs) encourage the use of off-site compliance monitoring activities. With advancements in technology, off-site compliance monitoring activities have the potential for being effective tools for determining noncompliance and for identifying inspection priorities.² During the public health emergency, we will count off-site compliance monitoring activities towards a partner agency's inspection commitments under OECA's Compliance Monitoring Strategies (CMSs) and towards grant commitments (*see* Enclosure). OECA requests that you document your off-site compliance monitoring activities in the appropriate EPA database of record. OECA is not recommending that partner agencies submit alternative compliance monitoring plans based solely on COVID-19 reasons. Given the COVID-19 public health emergency individual state justifications for alternative monitoring strategies are not necessary.

We recommend that our partner agencies and EPA's regional ECAD Directors discuss adjustments to inspection commitments pursuant to the appropriate processes for each program set forth in the Enclosure.

¹ The term "[inspection](#)" refers to on-site government compliance monitoring activities performed by an authorized inspector for the purpose of assessing compliance at a regulated entity. The term does not refer to other on-site activities such as those providing technical assistance, compliance assistance, or site assessments (e.g., Safe Drinking Water Act sanitary surveys; Comprehensive Environmental Response, Compensation, and Liability Act site assessments).

² This includes the use of Remote Video Partial Compliance Evaluations that EPA and states are currently piloting.

Under a process established in collaboration with the Environmental Council of the States and program-specific state associations, OECA periodically evaluates state performance pursuant to the Clean Air Act, the Clean Water Act National Pollutant Discharge Elimination System permit program, and the Resource Conservation and Recovery Act program CMSs as part of the State Review Framework (SRF). SRF reviews being conducted in federal fiscal year (FFY) 2020 will not be affected, because the SRF reviews prior years. That said, some file reviews conducted in FFY 2020 may be delayed, depending on the operating status of state and EPA regional offices. For reviews that will take place in FFY 2021, OECA and regional ECADs will work with partner agencies to make necessary adjustments to evaluate commitments where partner agencies utilize either the flexibilities described in this letter and its Enclosure, or the existing flexibilities inherent in each CMS.

Enclosed with this letter are OECA's recommended processes for adjusting partner agency inspection commitments due to the COVID-19 public health emergency. These processes apply for the remainder of FFY 2020 through March 2021. As we continue to learn more about the COVID-19 public health emergency and how it affects our programs, we may update these processes. Additional resources for adjusting and prioritizing partner agency inspection commitments include EPA's Enforcement and Compliance History Online, which contains inspection prioritization tools.

I want to reiterate our intent to be flexible in these unprecedented times. We will work together, consistent with OECA's [July 2019 Partnership Policy](#), to get the best possible outcome to ensure compliance with the law while ensuring the safety of our respective workforces, regulated entities and the public. If you have questions regarding this letter, please contact Martha Segall (segall.martha@epa.gov) at 202-564-0723. Questions concerning OECA's State Review Framework can be directed to Chris Knopes (knopes.christopher@epa.gov) at 202-564-2337.

Sincerely,



Susan Parker Bodine

Enclosure

cc: Environmental Council of States, Executive Director and Officers
Executive Directors of Program-Specific State Associations (Association of Clean Water Administrators, Association of American Pesticide Control Officials, Association of State and Territorial Solid Waste Management Officials, Association of Air Pollution Control Agencies)
EPA-Tribal Partnership Groups (Tribal Pesticide Program Council, National Tribal Caucus, National Tribal Water Council, National Tribal Toxics Council, National Tribal Air Association, Tribal Waste and Response Steering Committee)
Regional Enforcement and Compliance Assurance Division Directors and Deputies
National Program Managers (OW, OLEM, OAR, and OCSPP)
Office of Enforcement and Compliance Assurance, Office Directors and Deputies
Office of Compliance Office and Division Directors

ENCLOSURE

Office of Enforcement and Compliance Assurance Recommended Processes for Adjusting Inspection Commitments Due to the COVID-19 Public Health Emergency *[Applicable through March 2021]*

There are a variety of processes used to establish and adjust inspection commitments that vary by program and sometimes by region. The U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance (OECA), regional EPA Enforcement and Compliance Assurance Divisions (ECADs), and states, tribes, territories, and local agencies (hereafter referred to collectively as "partner agencies") should follow the appropriate processes for adjusting inspection commitments for OECA compliance monitoring programs. This is a summary of the processes that should be followed in adjusting inspection commitments:

1. For the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA) compliance monitoring programs, OECA allocates funding to EPA regions, which then issue State and Tribal Assistance Grants for FIFRA and TSCA compliance monitoring activities. These inspection commitments are negotiated with the EPA regional project officer and placed in grant workplans. These grant workplans may be renegotiated with your regional project officer or grant specialist in accordance with grant guidance provided by the Office of Grants and Debarment (see [Frequent Questions about Grants and Coronavirus \(COVID-19\)](#)).
2. Other cooperative agreement and grant programs funding inspection activities under the Safe Drinking Water Act, Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and the Underground Storage Tank programs are administered by other National Program Manager (NPM) offices. Partner agencies should contact their regional grant project officers and the respective NPM offices who administer those grant programs for their guidance on how to address COVID-19-related impacts on programmatic grant commitments.
3. For compliance monitoring commitments established through any of the five OECA Compliance Monitoring Strategies (CMSs) (CAA Stationary Source Program, CWA National Pollutant Discharge Elimination System Permit Program, FIFRA, TSCA, and RCRA hazardous waste programs) (see [OECA's Resources and Guidance Documents for Compliance Monitoring Webpage](#)), OECA recommends that partner agencies discuss with their regional ECADs whether off-site compliance monitoring activities could be substituted for inspections in order to maintain the integrity of programs and to deter noncompliance during the COVID-19 public health emergency. Any agreements to adjust inspection coverage and frequency, or to substitute off-site compliance monitoring for inspections because of the COVID-19 public health emergency, should be documented by the partner agency and provided to the regional ECAD. Regional ECADs will share that information with OECA in advance of the end of the federal fiscal year. Please note that there are a couple of instances in which there is a statutory or regulatory inspection requirement in the CMS.³ Additionally, over time, the CMSs have evolved to provide our partner agencies with flexibility to address local pollution and compliance concerns while maintaining national program

³ For RCRA, EPA and partner agencies are required to inspect each treatment, storage and disposal facility (TSDF) every other year and each federal TSDF every year. Approved publicly owned treatment works (POTWs) and states that implement the pretreatment program under 40 C.F.R. § 403.10(e) are required to inspect and sample the effluent from each significant industrial user at least once a year (40 C.F.R. § 403.8(f)(2)).

integrity. OECA is not recommending that partner agencies submit an alternative compliance monitoring plan to adjust their FFY 2020 commitments under each of the five CMSs based solely on the impact of the COVID-19 public health emergency. Given the COVID-19 public health emergency individual state justifications for alternative monitoring strategies are not necessary. End-of-year reporting and/or other discussion forums will provide an opportunity for each partner agency and regional ECAD to document the compliance monitoring commitments that they agreed upon to implement a robust compliance monitoring program given the challenges of the COVID-19 public health emergency.