FY 2011

Office of Enforcement and

Compliance Assurance (OECA)

National Program Manager (NPM) Guidance

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TABLE OF CONTENTS

EXECUTIVE SUMMARY **5**

A. PROGRAM OFFICE 5
B. INTRODUCTION/ CONTEXT 5
C. PROGRAM PRIORITIES 5
D. IMPLEMENTATION STRATEGIES 8
E. SIGNIFICANT CHANGES FROM FY 2010 11
F. CONTACTS 12

SECTION I: OECA GUIDANCE DEVELOPMENT AND FEEDBACK PROCESS **13**

SECTION II: SPECIFIC ENVIRONMENTAL JUSTICE PROGRAM PERFORMANCE EXPECTATIONS **14**

1. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *14*
2. *Reset Relationship with States and Tribes by Enlisting Our Partners to Meet Community Needs* *15*
3. *Improve Transparency* *16*

SECTION III: KEY PROGRAM PRIORITIES AND STRATEGIS TO ADDRESS ENVIRONMENTAL PROBLEMS FROM AIR POLLUTION **17**

A. CLEAN AIR ACT (CAA) 17
1. *Implement National Enforcement Initiatives* *17*
2. *Link with Top Office of Air and Radiation Priorities* *18*
3. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *18*
4. *Reset Our Relationships with States* *21*
5. *Improve Transparency* *22*
6. *Relevant Policies and Guidances* *23*

SECTION IV: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM WATER POLLUTION **25**

A. CLEAN WATER ACT (CWA) 25
1. *Clean Water Act Action Plan* *25*
2. *High Priority Performance Goal* *25*
3. *Implement National Enforcement Initiatives* *26*
4. *Link with Top Office of Water Priorities* *27*
5. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *28*
6. *Reset Our Relationships with States* *32*
7. *Improve Transparency* *33*
8. *Relevant Policies and Guidances* *34*

B. SAFE DRINKING WATER ACT (SDWA) 34
1. *Link with Top Office of Water Priorities* *35*
2. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *35*
3. *Reset Our Relationships with States* *36*
4. *Improve Transparency* *37*
5. *Relevant Policies and Guidances* *37*

SECTION V: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS FROM WASTE, TOXICS, AND PESTICIDES POLLUTION **38**

A. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) 38
1. *Statutory and Regulatory Requirements* *38*
2. *Implement National Enforcement Initiatives* *39*
3. *Link with Top OSWER Priorities* *40*
4. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *40*
5. *Reset Our Relationships with States* *44*
6. *Improve Transparency* *45*
7. *Relevant Policies and Guidances* *45*

B. TOXIC SUBSTANCES CONTROL ACT (TSCA) 45
1. *Link with Top Office of Pesticides, Prevention, and Toxics Priorities* *46*
2. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *46*
3. *Reset Our Relationships with States* *52*
4. *Improve Transparency* *54*
5. *Relevant Policies, and Guidances* *54*
C. FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT (FIFRA) 55
1. *Link with Top Office of Pesticide Programs Priorities* *55*
2. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *56*
3. *Reset Our Relationships with States* *61*
4. *Improve Transparency* *62*
5. *Relevant Policies and Guidances* *62*
D. SPECIFIC COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT (CERCLA) ENFORCEMENT PROGRAM PERFORMANCE EXPECTATIONS 63
1. *Link with Top OSWER Priorities* *63*
2. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *64*
3. *Working With States, Tribes and Local Communities* *64*
4. *Improve Transparency* *65*

SECTION VI: KEY PROGRAM PRIORITIES AND STRATEGIES TO ADDRESS ENVIRONMENTAL PROBLEMS THROUGH CRIMINAL ENFORCEMENT 66

1. *Criminal Enforcement Priorities* *66*
2. *Link with Top Program Office Priorities* *66*
3. *Reset Our Relationships with Law Enforcement Partners That Support State Environmental Crimes Investigations and Prosecutions* *66*
4. *Improve Transparency* *67*

SECTION VII: NATIONAL PROGRAM REQUIREMENTS FOR ADDITIONAL OECA PROGRAMS UNDER GOAL 5 68

A. SPECIFIC FEDERAL ACTIVITIES PROGRAM PERFORMANCE EXPECTATIONS 68
B. SPECIFIC EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT (EPCRA) PROGRAM PERFORMANCE EXPECTATIONS 70
1. *Link with Top Office of Environmental Information Priorities* *70*
2. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *70*
3. *Reset Our Relationships with States* *72*
4. *Improve Transparency* *72*
5. *Relevant Policies and Guidances* *72*
C. SPECIFIC MULTIMEDIA PROGRAM PERFORMANCE EXPECTATIONS 72
D. SPECIFIC INDIAN COUNTRY PROGRAM PERFORMANCE EXPECTATIONS 73
1. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *73*
2. *Maintain Our Relationships with Tribes* *73*
3. *Improve Transparency* *74*
4. *Relevant Policies and Guidances* *74*
F. SPECIFIC FEDERAL FACILITIES ENFORCEMENT PROGRAM PERFORMANCE EXPECTATIONS 74
1. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *75*
2. *Reset Our Relationships with States* *76*
3. *Improve Transparency* *77*
G. SPECIFIC COMPLIANCE INCENTIVES PROGRAM PERFORMANCE EXPECTATIONS 77
1. *Aggressively Go After Pollution Problems That Make a Difference in Communities* *77*
2. *Reset Our Relationships with States* *78*
3. *Improve Transparency* *78*
H. SPECIFIC TECHNICAL SUPPORT AND TRAINING EXPECTATIONS 78
I. SPECIFIC STATE REVIEW FRAMEWORK (SRF) EXPECTATIONS 79
J. STATE GRANT RESULTS AND REPORTING 80

SECTION VIII. FY2010 OECA WORKPLAN SUBMISSION INSTRUCTIONS 81

A. ANNUAL COMMITMENT SYSTEM.....81
B. FTE RESOURCE CHARTS 81

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, States and Tribes implementing EPA-approved inspection and enforcement programs[1]. 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) 2011 describes how the (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 maximizes compliance with ten distinct federal environmental statutes through the use of compliance assistance, incentives, monitoring, and civil and criminal enforcement. 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.

The majority of the work in the FY 2011 NPMG is accomplished under the strategic goal "Enforcing Environmental Laws" in the draft FY 2010-2015 EPA Strategic Plan (Goal 5). Goal 5 of the Strategic Plan addresses how EPA will address pollution problems through vigorous and targeted civil and criminal enforcement, promotes compliance and deters 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 2011 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:

- Taking Action on Climate Change: Enforcement supports the Agency's climate strategy by recognizing reductions of global warming pollution in settlements of enforcement actions. OECA will be working to support the integrity of the monitoring and reporting

[1] EPA implements programs in states and Indian country until EPA approves the state or Tribe to implement the inspection and enforcement program.

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, refinery, cement and glass industries, and taking aggressive action to bring them into compliance and install 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 OCSPP 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 clean up at RCRA corrective action sites where the clean up progress is stalled.

- Protecting America's Waters**:** OECA is revamping the water enforcement program to focus on the problems that are the biggest threat to the nation's waters. 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. 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 the enforcement work OECA does, as described above, OECA can help protect communities by targeting enforcement in areas where we find serious noncompliance and where communities 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 NEPA. OECA also will make more available and understandable information on facility compliance and government response, so that people have the 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.

OECA's overall enforcement goals for FY 2011 are to:

- Aggressively go after pollution problems that make a difference in communities. Use vigorous civil and criminal enforcement that targets the most serious water, air and chemical hazards; and advance environmental justice by protecting vulnerable communities.
    - <u>Clean water</u>
        - Clean water act action plan: revamp enforcement and work with permitting to focus on the biggest pollution problems, including
            - Get raw sewage out of the water
            - Cut pollution from animal waste
            - Reduce polluted storm water runoff
        - Assure clean drinking water for all communities, including in Indian country
        - Clean up great waters that matter to communities, e.g, Chesapeake Bay
    - <u>Clean air</u>
        - Cut toxic air pollution in communities
        - Reduce air pollution from largest sources, including coal fired power plants, cement, acid and glass sectors
    - <u>Climate and clean energy</u>
        - Assure compliance with greenhouse gas reporting rule
        - Encourage greenhouse gas emission reductions through settlements
        - Target energy sector compliance with air, water and waste rules
    - <u>Protect people from exposure to hazardous chemicals</u>
        - Prevent releases of hazardous chemicals that threaten public health or the environment
        - Press for clean up of hazardous sites in communities: polluter pays
        - Reform chemical management enforcement and reduce exposure to pesticides focus 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: make sure we are delivering on our joint commitment to a clean and healthy environment.
    - <u>Shared accountability</u>
        - Make joint progress with States and Tribes toward clean air and water goals, protection from exposure to hazardous chemicals
        - Work toward shared focus on protecting vulnerable communities
    - <u>Strengthened oversight</u>
        - Assure strong and effective State enforcement of federal environmental laws

        - Press for consistent enforcement across States and Regions: fairness and level playing field
    - <u>Establish new model for shared accountability and strengthened oversight, starting with water</u>
        - Build focus on highest priority problems into grants, enforcement and permitting agreements
        - Define clear expectations for state performance
        - Take federal action where not meeting minimum expectations

- 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 runoff 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

The initiative implementation strategies are currently under development. The initiative implementation teams are in the process of developing goals and measures for each initiative. Additionally, the teams are exploring options for innovative approaches to implementing the initiatives. The draft initiative strategies and draft ACS commitments will be distributed to all Regions for comment. OECA projects finalizing the FY2011-2013 initiative goal statements and measures in mid-June.

D. Implementation Strategies

<u>Internal Enforcement Goals</u>

In implementing the enforcement and compliance assurance program, OECA encourages all EPA enforcement programs to consider the following internal goals:

- **Build innovation into the work**: Explore new ideas for improving performance and increasing efficiency, encourage experimentation within the accountability framework, and to target actions for deterrence

- **Strengthen measures**: Adopt outcome goals and measures that connect to what people care about, use evidence based internal measures that are aligned to outcomes, and include States in environmental and compliance outcomes.

- **Revitalize communications**: Use clear and consistent external messages that reaches and resonates with communities, open two way communications with States and Tribes, and when communicating outside of EPA, work with the concept of one EPA, with headquarters, Regions, and programs all on the same page

- **Work with programs**: Work with other EPA programs to make regulations clear and enforceable, ensure permitting and enforcement work together, and adopt shared priorities.

Integrated Approach

Through enforcement and compliance assurance, OECA seeks to change the non-compliance behavior of regulated entities through an overall integrated approach using a variety of tools, including:

- Compliance assistance to educate entities by developing and delivering tools, activities or technical assistance to attain and go beyond compliance, and using pollution prevention, environmental management systems and innovative approaches;
- Incentives to encourage entities to monitor their own compliance and take prompt corrective action when violations are detected;
- Monitoring to ensure accountability by determining compliance status under the law;
- Civil and criminal enforcement to require compliance at particular facilities, and to achieve widespread compliance through deterrence by taking aggressive action and assessing penalties that make it more expensive to violate than to comply; and
- Innovative approaches to address noncompliance and improve the environment.

While ensuring compliance, EPA and States should consider the use of all available tools to address specific environmental risks and non-compliance patterns. The integrated use of tools and the development of new ones enables us to address environmental noncompliance problems as efficiently and effectively as possible. The integrated approach requires regulators to consider the reasons for noncompliance and identify the mix of tools that will most effectively improve compliance among the target audience. An integrated approach allows a team of experts to create a strategy that leverages resources and uses the appropriate combination or sequencing of individual tools to optimize success in addressing the problem.

An integrated approach benefits regulators by: 1) targeting limited inspection and enforcement resources on the bad actors; 2) building capacity and coordination across programs, regions and agencies through the planning process, resulting in the sharing of information and mutually working toward shared goals; 3) expanding governments' presence and demonstrating governments' commitment by strategically applying a range of tools to correct significant problems.

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. Information on compliance assistance, compliance audits, and compliance monitoring, including relevant policies and guidances for implementing the enforcement and compliance program, can be found at the following OECA web sites:

- Compliance Assistance: http://www.epa.gov/compliance/assistance/index.html
- Compliance Incentives: http://www.epa.gov/compliance/incentives/index.html
- Compliance Monitoring: http://www.epa.gov/compliance/monitoring/index.html
- Enforcement: http://www.epa.gov/compliance/civil/index.html

Program Reviews

OECA monitors regional and state activities in a set of annual commitments at mid-year and at the end of a fiscal year based upon Region and State results entered in OECA databases, the Annual Commitment System, 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 engage to discuss the management of program activities and the distribution of resources. These discussions result in regional commitments for a specific level of activity for the fiscal year. These commitments constitute the agreed upon approach between the regions and the national program manager for achieving performance expectations for the fiscal year.

Regional Priorities

EPA Regions may also have 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, Regions 3, 4, and 5 are working on the Port of Huntington Tri-State Collaborative Geographic Initiative. The Port is located in KY, OH and WV. This enforcement and compliance assistance Initiative was undertaken to more fully and comprehensively address the impacts of noncompliance on land, air, and water resources by Port facilities and to promote environmental stewardship in the Port of Huntington area. There is increasing concern related to public health and environmental issues within the Port of Huntington's boundaries related to: air toxics, air quality near schools, NO_x emissions related to nitrogen loading in Chesapeake Bay, Port-related storm water discharges, coal-fired utilities, coal and chemical product processing/handling facilities, and the effects of these activities on the community and Environmental Justice populations within the Port's boundaries.

Another example involves the Chesapeake Bay. 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 airshed 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 (NH_3) emissions from concentrated animal feeding operations (CAFOs).

E. Significant Changes from FY 2010

The most significant change from the FY 2010 guidance is to focus the NPMG 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. To this end, the FY 2011 NPMG is organized to 1) describe the specific expectations for Regions that implement the Assistant Administrator's priorities, 2) explain how the enforcement program supports the priorities of other EPA national programs, and 3) identify the new National Enforcement Initiatives for FY 2011 through FY 2013. In addition, this guidance now itemizes the relevant enforcement guidances and policies in a list instead of describing each one.

Clean Water Action Plan: OECA is currently working with EPA Regions, States and the Office of Water to implement the Clean Water Act Action Plan ("the Action Plan") issued in October 2009. Since work is ongoing under the Action Plan, FY2011 will be a transition year as we revamp the Clean Water Act compliance and enforcement program to better address our nation's water quality challenges. This NPMG includes more immediate recommendations arising from the implementation of the Action Plan to improve identification of serious non-compliance problems, identify new approaches to address water source violations, and to strengthen oversight of state programs.

New National Enforcement Initiatives: OECA will start work on the National Enforcement Initiatives selected for FY 2011-13 in FY 2011. Regional expectations for the Initiatives will be made available in the third quarter of FY 2010 before the commitment levels must be agreed upon.

Environmental Justice Expectations: The NPMG includes a new environmental justice section that contains expectations for implementing the Agency's goals to advance environmental justice. In addition, each of the media chapters now addresses environmental justice expectations for using screening tools/approaches and other information to support targeting of enforcement actions and to enhance performance reporting.

Federal Facilities Expectations in Media Chapters: For the past several years, OECA has focused the Federal Facilities expectations in a separate section. Each of the media chapters in this NPMG now specifically list expectations for the Regions regarding Federal Facilities.

Indian Country Expectations in Media Chapters: For the past several years, OECA has focused the Indian Country expectations for drinking water, compliance at schools, and dumps in a separate section. Each of the media chapters in this NPMG now specifically list expectations for the Regions regarding Indian country.

F. Contacts

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

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SECTION I: OECA GUIDANCE DEVELOPMENT AND FEEDBACK PROCESS

The OECA NPM Guidance is structured and developed to define program goals, priorities, strategies, and performance measures in accordance with the Strategic Plan and the FY 2011 Annual Plan and Budget. Most of OECA's work is in response to the objectives of Goal 5 of the Strategic Plan and is covered by this Guidance.

OECA restructured 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 progress of EPA program offices in achieving their environmental and public health goals. EPA posted the FY 2011 NPM draft Guidance (www.epa.gov/ocfo/npmguidance) to allow Regions, States, Tribes, and others to review and comment on the draft. OECA received comment from Regions, States, Tribes, and other stakeholders. OECA responded to the comments and incorporated changes, as needed, in the final documents. The final guidance and a Response to Comments Summary was posted on the Internet showing the action taken in the final guidance as a result of comments.

Because EPA's Strategic Plan is not expected to be finalized until later in the Fiscal Year, there may be later changes that impact this NPMG. OECA will develop and issue addendums explaining any changes and implications for Regions, States, and Tribes as a result of a changed Strategic Plan.

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 enforcement programs. In this role, OECA ensures that facilities in communities disproportionately burdened by pollution are complying with the law. OECA aggressively applies regulatory tools to protect vulnerable communities, enlists partners to meet community needs, and fosters community involvement in EPA's decision-making processes by making information available.

Second, OECA is the National Program Manager for the Environmental Justice (EJ) Program. The Environmental Justice Program facilitates headquarter and regional efforts to achieve measurable environmental or public health benefits/results for communities disproportionately burdened by pollution. EPA achieves this goal by: (1) Engaging communities in EPA decision-making, and enlisting partners, including federal and state agencies, to meet community needs; (2) Supporting community efforts to build healthy, sustainable and green neighborhoods; and (3) Applying EPA's regulatory tools to protect vulnerable communities. OECA will address these goals through the following performance expectations.

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

EPA will apply regulatory tools to protect vulnerable communities and enlist partners to aggressively go after pollution problems that will make a difference to communities. FY2011 regional enforcement work will protect communities disproportionately impacted by pollution by targeting enforcement in areas where there are serious non-compliance and multiple pollution threats. In addition, Regions are encouraged to work with other federal agencies to make sure environmental justice considerations are included in their decision-making process as they prepare environmental analyses (EISs or EAs) under NEPA.

- In FY2011, OECA will begin to use the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) or similar screening tools/approaches and other information, e.g., community input, to support targeting of enforcement actions and to enhance performance reporting.

- Regions should take enforcement action against priority environmental justice pollution problems in sectors as identified in the FY2011 – FY2013 National Enforcement Initiatives. By the end of FY2010, regional enforcement programs should identify and establish commitments towards strategic measures that enable tracking of progress to reduce pollution and risk in communities disproportionately impacted by pollution. Instructions and guidance on how to establish measurable commitments will be provided by the Office of Environmental Justice in FY2010.

- In the first quarter of FY2011, Regions should report progress on environmental justice commitments. Instructions will be provided by the Office of Environmental Justice in the fourth quarter of FY2010.

2. Reset Relationship with States and Tribes by Enlisting Our Partners to Meet Community Needs

Regional enforcement programs should work with other EPA programs, federal agencies, States and Tribes to ensure that EJ informs permitting, standards, and enforcement. Regions are encouraged to work with other federal agencies to make sure environmental justice informs their decision making as they do environmental assessments under NEPA. In addition, Regions should take into consideration the federal trust responsibilities to federally-recognized Tribes, including Alaska native Tribes and Villages, when preparing environmental assessments on Tribal lands.

- Conduct regular regional enforcement office engagement with States, Tribes, and local EJ agencies to discuss EJ concerns that arise at sites or facilities where EPA is involved.

- Ensure EJ concerns are properly addressed in all actions where EPA must comply with NEPA (i.e., water treatment facility projects and other grants, new source NPDES permits, and EPA facilities).

- Meet with and provide communities with information on site-specific issues or particular interest of concern as they arise, particularly when compliance concerns are reported or suspected.

- Engage with States in annual planning processes and negotiation of grant agreements to identify communities facing multiple pollution burdens and target actions to improve the environment in such overburdened communities.

- Regions should engage state and local regulatory partners on enforcement and compliance issues in highly impacted areas where multiple jurisdictional authorities should be applied in a more coordinated fashion. Building on its FY09-FY10 EJ Showcase Community work, each Region should enlist state/local agencies to work with communities to identify environmental and health threats to achieve maximum compliance with environmental regulations and protect human health and the environment. EPA will promote use of an integrated strategy that makes appropriate use of all of the compliance assurance tools it has at its disposal including compliance assistance and monitoring, incentives, administrative, civil judicial and criminal actions. The Regions should also coordinate enforcement efforts with other available means (e.g., community involvement, stewardship and voluntary programs) to address issues that can't be effectively met through enforcement alone. Regions should engage with States in annual planning processes and negotiation of grant agreements to identify communities facing multiple pollution burdens and target actions to improve the environment in such overburdened communities.

3. Improve Transparency

OECA will enhance its efforts to make available information on facility compliance and government enforcement actions more accessible so people have the information they need to take action in their communities. Transparency, openness, and engagement with communities on where EPA should focus enforcement efforts will enable communities to know what EPA is doing, participate in decision-making processes, and create pressure for better compliance.

Regions and NPMs should promote the use of integrated problem solving strategies in their EJ Showcase Communities. (http://www.epa.gov/compliance/environmentaljustice/grants/ej-showcase.html) Such strategies engage all appropriate EPA programs as well as state, local, tribal and nongovernment partners. An integrated strategy coordinates the use of all appropriate tools to address the issues identified in the Showcase Communities. These tools include meaningful community involvement, outreach and education, environmental research, risk assessment, monitoring and modeling, alternate dispute resolution, permitting and regulatory tools, as well as many voluntary efforts. The Showcase Communities provide a unique opportunity for collaboration with clearly defined measures and outcomes to be managed and reported by the Regions.

Regions should:

- Ensure the public has access to compliance and enforcement documents and data that they can understand, particularly in disproportionately impacted communities, through access to mapping tools and through technical assistance support programs, as available.

- Seek input in the identification of facilities or areas of concern (i.e., through periodic listening sessions, hotlines, outreach efforts, blogs, etc) and during other appropriate phases of compliance and decision-making processes.

- Ensure that EPA public meetings on enforcement issues address the concerns of potentially affected populations, including those living in minority and/or low-income areas and tribal communities.

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

A. Clean Air Act (CAA)

OECA addresses air pollution problems through the following CAA programs:

- New Source Performance Standards (NSPS)
- National Emission Standards for Hazardous Air Pollutants (NESHAP)
- Maximum Available Control Technology (MACT)
- New Source Review/Prevention of Significant Deterioration (NRS/PSD)
- Enforcement of State Implementation Plans and plans developed and approved under Section 111(d) of the Clean Air Act.
- Title V Operating Permits
- Stratospheric Ozone Protection
- Section 112(r) Risk Management Plans (RMPs)
- Title II (Emission Standards for Moving Sources)

1. Implement National Enforcement Initiatives

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

Cutting Toxic Air Pollution that Affect Communities' Health: In 1990, Congress identified 187 hazardous air pollutants that present significant threats to human health. See, http://www.epa.gov/ttn/atw/188polls.html. These pollutants are known or suspected to cause cancer and other serious health effects, such as reproductive or birth defects. This threat may be particularly important for communities with disproportionate exposure to environmental risks and those with greater concentrations of sensitive populations, including urban minority and low-income communities. The Clean Air Act and EPA's regulations impose strict emission control requirements (known as "Maximum Available Control Technology" or "MACT") for these pollutants, which are permitted by a wide range of industrial and commercial facilities. For FY2011-13, EPA will use a national enforcement initiative to focus on excess emissions caused by facilities' failure to comply with EPA's leak detection and repair requirements, restrictions on flaring, restrictions for benzene, and failure to address excess emissions during start-up, shutdown and malfunction events. OECA will partner with EPA's Office of Air and Office of Research and Development on this effort, and will give particular emphasis to problems affecting local communities that are disproportionately impacted by pollution from multiple sources.

Reducing Widespread Air Pollution from the Largest Sources, Especially the Coal-fired Utility, Cement, Glass, and Acid Sectors: The New Source Review and Prevention of Significant Deterioration requirements of the Clean Air Act 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 excessive emissions of air pollutants such as sulfur dioxide, nitrogen oxides and particulate matter. These pollutants can be carried long distances and can

have significant adverse effects on human health, including asthma, respiratory diseases and premature death. These effects may be particularly significant for communities with disproportionate exposure to environmental risks and vulnerable populations, including children. In recent years EPA has made considerable progress in reducing this excessive pollution by bringing enforcement actions against coal-fired power plants, cement manufacturing facilities, sulfuric and nitric acid manufacturing facilities and glass manufacturing facilities. However, more work remains to be done to bring these sectors into compliance with the Clean Air Act and protect communities burdened with harmful air pollution. Therefore EPA will continue this work as a National Enforcement Initiative for FY2011-2013.

2. Link with Top Office of Air and Radiation Priorities

OECA addresses top Office of Air and Radiation priorities in the following ways:

- Greenhouse Gases: OECA is developing an implementation strategy for the Mandatory Greenhouse Gases Reporting Rule to provide guidance to Regions on compliance monitoring and assistance activities, and the appropriate enforcement response to support the integrity of the monitoring and reporting system. OECA continues to support the Agency climate strategy by recognizing reductions of global warming pollution in settlements of enforcement actions.

- Air Toxics in Communities: OECA will address this OAR priority through one of the 2011 – 2013 National Enforcement Initiatives. OECA also is working closely with the Office of Air and Radiation and the Office of Research and Development to reduce toxic air pollution through standards, permitting, compliance monitoring and assistance activities, and enforcement, especially in communities that are disproportionately affected by pollution. This initiative represents a new model for programmatically addressing the cross-cutting nature of EJ issues by systematically linking OECA enforcement efforts with permits, rules and other regulatory tools administered by the Agency's media programs.

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

Air pollution can spread with the wind and is therefore 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 affects caused by air pollution include difficulty in breathing, exacerbation of respiratory and cardiac conditions, cancer and death.

Regions and delegated state/local agencies and Tribes 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 (FY 2010 issuance) to address significant air pollution problems that adversely affect impacted communities by reducing such pollution from the largest sources with special attention directed toward reducing toxic air pollution. (Web links to these and other guidance documents are on page 18.) Regions should work with delegated agencies/tribes to ensure they are familiar with national guidance, aware of the flexibilities within the guidance, and implement their programs consistent with the guidance.

- Use targeting tools to identify the most important air pollution problems and the most serious violations, including use of screening tools/approaches, such as the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), and other information, such as community input, to support compliance monitoring activities.

- Have a process for identifying, targeting, evaluating, and responding to illegal activities affecting priority air pollution problems.

- 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), especially those facilities that are on the HPV Watch List. OECA will be issuing further guidance concerning implementation of the HPV Policy.

- 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.

- Utilize assistance, incentives, monitoring, and enforcement tools and other approaches that all are effective in achieving widespread compliance. The appropriate combination and sequencing of such compliance assurance tools should be considered when determining the best approach for addressing environmental problems and returning sources to compliance.

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. Both initiated and completed investigations are to be reported to 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.

- Include evaluations of chlorofluorocarbon (CFCs) and other ozone depleting substances (ODS) as part of routine full compliance evaluations (FCEs) / partial compliance evaluations (PCEs) to the extent the regulations apply.

- Provide assistance to delegated agencies, including initiating enforcement actions, to address non-compliance at federal facilities. Exercise the 1997 clarified penalty authority against federal agencies for CAA violations in appropriate circumstances. FFEO will complete new research on power plants operating on military bases.

- Perform CAA section 112(r) inspections at regulated facilities in the Region, including high risk facilities. A high risk facility is one which meets one or more of the following criteria: 1) facilities who have reported RMP worst-case scenario population 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 process are not considered high risk). Inspections at high-risk facilities should also include an evaluation of compliance with applicable EPCRA and CERCLA requirements.

- Focus on identifying RMP non-filers and initiating enforcement as appropriate. Headquarters will continue to provide support in this area.

- Evaluate and bring to closure 100% of any self-disclosures received by the Region.

- Settle or litigate cases filed in years prior to FY 2011 and ensure investigation and issuance of appropriate action for any tips, complaints, or referrals received by EPA.

- Exercise authority in accordance with the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Amendments to the CAA Civil Penalty Policy to implement the 2008 Penalty Inflation Rule. (Web links to these and other guidance documents are on page 23-24.)

- Ensure compliance with environmental statutes in Indian country unless and until a Tribe obtains primacy.

COMMITMENT CAA 4[2]-: Number of compliance evaluations to be conducted at majors, 80% synthetic minors, and other sources (as appropriate) by the Regions. [Note: Break out evaluation

[2] To insure data quality when comparing commitments and results between different fiscal years, measures that span more that one year retain the measure number. Numbers of measures that are discontinued cannot be used again. Therefore, the commitment measures are not in sequential order. Commitment CAA 04 captures core program activities previously reported under separate commitment that have been discontinued. Reporting under one commitment allows for a greater understanding of the core program as a whole and how regional

projections by source classification and by compliance monitoring category (FCE, PCE, and Investigations). In the comment section, 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).

COMMITMENT CAA 11-: Regions are to conduct inspections at 5% of the total number of facilities in the Region required to submit RMPs. Of these inspections, 25% must be conducted at high-risk facilities. These inspections at high-risk facilities also must include an evaluation of compliance with Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-know Act (EPCRA) and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requirements. If the Region is responsible for entering data for a delegated agency or Tribe, the Region should identify the delegated agency or Tribe. [Note: Section 68.220 audits conducted do not count towards the 5% inspection target.]

4. Reset Our Relationships with States

The Regions should work with the state/local agencies and Tribes 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 (quarterly)[3] meetings with senior state management to assess progress in how the State has been performing overall in its implementation of the program.

- Where States are not meeting performance expectations, Regions should take enforcement actions to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve State performance through these actions. Regions need to take action when necessary to communicate what things need attention to achieve goals of the federal environmental laws and ensure a level playing field between States. Where States are not taking enforcement actions in response to serious violations, Regions are directed to take federal action.

- Ensuring 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 (anticipated FY 2010 issuance)). Regions should monitor the level and quality of efforts undertaken by the delegated agencies to ensure strong enforcement of environmental laws. Enforcement actions, whether taken by the Regions, delegated states/locals, or Tribes should always be timely and accurately reported.

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activities/commitments are related to one another.

[3] These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is strongly suggested as a best practice for ensuring progress in meeting goals. Regions may rely upon existing communications with states when they meet the intent of this section.

- Negotiating facility-specific CMS plans with all delegated agencies. Throughout the year, Regions are to be evaluating progress and working with delegated agencies to revise such CMS plans as necessary.

- Having frequent (at least monthly) discussions with delegated agencies to ensure consistent implementation of the HPV Policy.

- Implementing the State Review Framework for the CAA Program (see Section VI.G), and ensuring progress with corrective actions identified in the SRF reports.

- Reviewing state program progress periodically throughout the year in meetings between EPA and the States.

- Consulting with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs

COMMITMENT CAA 06[4]-: Ensure delegated agencies implement their compliance and enforcement program in accordance with the CAA CMS and have a negotiated facility-specific CMS plan in place. 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, this Commitment should reflect the alternative plan. [Note: Break out evaluation 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/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 state/local agencies and Tribes to verify that their compliance and enforcement data is input into 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.

[4] Commitment CAA 06 captures activities of delegated agencies previously reported under separate commitments that have been discontinued. Reporting under one commitment allows for a great understanding of delegated agency programs as a whole and how activities are related to one another.

- Work with EPA Headquarters to modernize AFS.

- Enter both draft and final State Review Framework (SRF) reports, which include Preliminary Data Analysis and file reviews, recommendations, state comments, and benefits arising from Framework reviews, including Element 13, into the Lotus Notes SRF Tracker database upon completion of a SRF review.

- Distinguish state information from Indian country information.

- Make information available to communities, including Tribes, who may lack access to the internet.

COMMITMENT CAA 07[5]: Regions and delegated agencies should enter 100% of MDRs in AFS consistent with the Agency policies and the AFS ICR. The reporting of such complete, accurate, and timely data by delegated agencies should be reflected in written, up-to-date agreements with the Regions. If the Region is responsible for entering data for a delegated agency or Tribe, the Region should identify the delegated agency or Tribe.

6. Relevant Policies and Guidances

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/cmspolicy.pdf
- CAA National Stack Testing Guidance
  www.epa.gov/compliance/resources/policies/monitoring/caa/stacktesting.pdf
- Area Source Implementation guidance (anticipated to be issued in FY 2010)
- 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

[5] Commitment CAA07 captures under one commitment the regional and delegated agency responsibilities associated with data reporting that had been previously reported under separate commitments which are now discontinued.

- CAA Section 112(r) Combined Enforcement Policy www.epa.gov/compliance/resources/policies/civil/caa/stationary/caa12r-enfpol.pdf
- Guidance for Auditing Risk Management Plans/Programs 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/

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 storm water, 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 is currently working with EPA Regions, States and the Office of Water to implement the CWA Action Plan ("the Action Plan") issued in October 2009. The Action Plan's three key elements are: 1) to focus our NPDES enforcement efforts on pollution sources that pose the greatest threats to water quality; 2) to strengthen oversight of state permitting and enforcement programs; and 3) to improve the accessibility and quality of information we provide to the public. These elements are consistent with the Assistant Administrator's goals for the compliance and enforcement program, listed on pages 7 and 8 of this Guidance.

Since work under the Action Plan is ongoing as this guidance is finalized, FY 2011 will be a transition year as we revamp the CWA compliance and enforcement program to better address our nation's water quality challenges. OECA anticipates that, in the long term, existing policies, strategies and regulations may need to be revised to better identify and address the key water quality problems where NPDES compliance and enforcement efforts are critical components to protection and restoration. OECA also expects that the implementation of the Action Plan will identify more immediate opportunities to improve identification of serious noncompliance problems as well as new approaches to address these violations.

2. High Priority Performance Goal

For FY 2011, the Office of Management and Budget asked each federal department and agency to develop a set of High Priority Performance Goals (HPPGs) that will measure performance for a limited set of high priority activities. EPA has developed a HPPG that measures EPA's actions to improve water quality through implementation of the Clean Water Act Action Plan. For FY 2011, OECA has the following HPPG:

- Increase pollutant-reducing enforcement actions in waters that don't meet water quality standards, and post results and analysis on the web.

This HPPG aligns with the Clean Water Act Action Plan goal of targeting enforcement to the most important water pollution problems. The HPPG is not based on expected increases in enforcement actions, but rather a greater emphasis on taking enforcement actions against facilities that discharge pollutants into waters not achieving water quality standards. The enforcement actions are concluded judicial and administrative enforcement cases that result in a reduction in pollutants. The HPPG is limited to EPA actions only because at present OECA does not have the necessary information to report on state enforcement actions. The HPPG is also tied to waters known to not achieve water quality standards, and thus do not measure enforcement actions that address water pollution problems in unassessed water bodies.

OECA will link relevant environmental information to facility location and compliance data to inform the targeting of compliance and enforcement efforts. The CWA section 303(d) lists are available to start targeting enforcement actions, but this information does not identify all impaired water. OECA will be adding to the CWA section 303(d) list those waters that have yet to achieve standards, but for which either a TMDL was completed or a TMDL was determined to not be necessary. The OTIS application to identify facilities discharging into these waters will be available in June 2010.

Starting in FY 2011, OECA will be tracking the performance of Regions to target enforcement actions on facilities discharging into waters not achieving water quality standards.

COMMITMENT CWA 10: Regions should identify the percentage of concluded federal judicial and administrative enforcement actions resulting in a reduction of pollutants that pertain to facilities discharging into waters that do not achieve water quality standards.

3. Implement National Enforcement Initiatives

The relevant 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 in particular have aging sewer systems that are not designed to handle heavy rainfall and snowfall, in addition to growing urban populations and industrial discharges. As a result, untreated sewage too frequently overflows from sewers into waterways, or backs 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 Clean Water Act 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. This National Enforcement Initiative will focus on reducing discharges from combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), and municipal separate storm sewer systems (MS4s) in FY2011-13, by obtaining cities' commitments to implement timely, affordable solutions to these problems, including increased use of green infrastructure and other innovative approaches.

Preventing Animal Waste from Contaminating Surface and Ground Waters: Concentrated Animal Feeding Operations (CAFOs) are agricultural operations where animals live in a confined environment. CAFOs can contain large numbers of animals, feed, manure, dead animals and production operations on a small land area. The animals generate a large amount of manure, which typically is held in lagoons or spread on nearby fields. If not properly controlled, manure can overflow from lagoons or run off from the fields into nearby surface waters or seep into ground water, carrying disease-causing pathogens, nutrients, or other contaminants into the water. This contaminates both surface waters and ground waters that may be used as drinking water sources and harms fish and other aquatic species in surface waters.

Several studies have found high concentrations of CAFOs in areas with low income and minority populations. This is typical in many rural areas of the country where livestock facilities are located. Children in these populations may be particularly susceptible to potential adverse health effects through exposure to contaminated surface waters or drinking water from contaminated ground water sources. The Clean Water Act prohibits the discharge of these pollutants into surface waters, and EPA's regulations require larger CAFOs to have permits (which impose control requirements) if the waste produced by animals on the farm will run off into surface waters. However, many CAFOs are not complying with these requirements. Therefore, EPA will continue and strengthen its enforcement focus on these facilities. For FY2011-13, OECA will focus primarily on existing large and medium CAFOs identified as discharging without a permit.

4. 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, OECA's enforcement and compliance will be particularly focused on protecting communities by getting raw sewage out of the water, cutting pollution from animal waste, and reducing polluted stormwater runoff.

- Focusing Efforts in Key Geographic Areas: OECA is improving protection of the Chesapeake Bay as part of the Chesapeake Bay Compliance and Enforcement Strategy (see http://www.epa.gov/compliance/civil/initiatives/chesapeakebay.html)

- Strengthening Protections for Our Waters: OECA is improving protection of water through the Clean Water Act Action Plan (see item 1. above and http://www.epa.gov/compliance/civil/cwa/cwaenfplan.html).

5. 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 storm water 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 storm water 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 concentrated animal feeding operations 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 state water control agencies will work to identify at-risk waters and use their appropriate regulatory tools, including setting strong water quality standards, issuing protective NPDES permits and addressing serious violations through effective enforcement to ensure water quality protection and restoration.

A. CWA NPDES Program

Regions in non-authorized States and Indian country, and authorized States and Tribes, should:

- Target to identify the most serious sources of pollution and the most serious violations. Use tools, such as available ambient monitoring data and GIS, to target the most significant sources of pollutants on those water bodies and watersheds that are impaired.

- 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), along with additional approaches identified in the CWA Action Plan, to target inspections aimed at identifying and addressing serious water quality problems where NPDES compliance and enforcement tools will be effective in addressing the pollution problem.

- Use existing national compliance and enforcement policy and guidance, e.g., the 1989 National Enforcement Management System (EMS), the 2007 NPDES Compliance Monitoring Strategy (CMS) and the 2007 Interim Significant Non-Compliance Policy for

CWA Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources (Interim WWSNC Policy), to identify and address serious violations impacting water quality. The Interim WWSNC Policy is currently only being used by EPA Regions to prioritize federal wet weather violations, though States are encouraged to consider its use. OECA, working with OW, will also finalize new approaches to improve these efforts in relation to the CWA Action Plan, and will provide additional guidance to EPA Regions and States on implementation at that time.

- Evaluate all violations to determine seriousness and determine an appropriate response. Facilities in significant noncompliance (SNC), especially those causing facilities to be on the Watch List should be acted on, along with sources with serious effluent limit violations, unpermitted discharges, systemic reporting problems or violations at facilities with potential to seriously impact to water quality.

- Consider pilots or innovate approaches to deal with more routine, paperwork violations.

- Initiate and complete civil enforcement actions, where appropriate to address serious violations contributing to a community's water quality problems. This includes judicial and administrative actions. Ensure compliance with consent decrees and administrative orders.

- Implement targeted "real time" (quick response) enforcement activities to address violations impacting communities' waters, such as violations at concentrated animal feeding operations (CAFOs). OECA will provide additional training and guidance on this approach in FY 10 and FY 11.

- Utilize assistance, incentives, monitoring, and enforcement tools to address serious noncompliance problems causing water quality problems in targeted communities and watersheds.

- Implement the use of NetDMR or other e-DMR tools for the electronic transfer of Discharge Monitoring Reports (DMR) to ICIS-NPDES, supported by use of the National Environmental Information Exchange Network (Exchange Network), by all of their NPDES permitted facilities. Administrator Jackson , in her July 7, 2009 memorandum, "Achieving the Promise of the National Environmental Information Exchange Network," requested cross-Agency commitment to make the Network the preferred way EPA, States, Tribes, and others share and exchange data while supporting an aggressive timetable to phase out other data submission and exchange methods. EPA Regions need to demonstrate leadership in implementing this strategic vision for the Agency.

In addition, Regions should:

- Implement CWA specific geographic compliance and enforcement strategies, as appropriate for their Region, including CWA Action Plan pilots, the Chesapeake Bay 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. (Note that Regions may accomplish this review through a routine screen of the PCS or ICIS-NPDES data and reviewing the DMRs themselves as necessary.)

- Where the Region has direct implementation responsibilities, they should inspect and audit pretreatment POTWs and Industrial Users (IUs) to evaluate the effectiveness of the regulatory authorities pretreatment program, either in conjunction with other compliance inspections at major and minor POTWs such as compliance evaluations (CEIs) or separately.

- Where the Region has direct implementation responsibilities, they should inspect biosolids/sludge facilities to evaluate the permittee's compliance with sludge monitoring, record keeping and reporting, treatment operations, and sampling and laboratory quality assurance, either in conjunction with other compliance inspections at major and minor POTWs such as compliance evaluations (CEIs) or separately.

- 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, regular EPA/State meetings to review performance, state data not entered into national databases, and GAO and/or IG reviews of state performance.

- Where States are not meeting performance expectations, Regions should take action to object to permits that are not protective of water quality and enforce to address serious violations. Regions should focus oversight resources on the most pressing performance problems in States which had been identified through permitting and enforcement reviews. Regions and States must work together to demonstrably improve state performance. Guidance will be made available under the Clean Water Act Action Plan to further clarify expectations.

- Coordinate, as appropriate, with the Coast Guard and other federal agencies which have significant roles in addressing spills, and follow all related Memoranda of Agreement including the MOU for the Vessels General Permit.

- Continue implementing the Federal Facility Integrated Strategy on Stormwater.

- Show support and encourage their States that are currently using the NPDES Permit Compliance System (PCS) to continue with their efforts to prepare to migrate to the modernized data system, ICIS-NPDES. The batch data flow capability from States to ICIS-NPDES through EPA's National Environmental Information Exchange Network is currently under development and is scheduled to be implemented in three distinct releases. The first release, scheduled for April 2011, will provide functionality for the transmittal of Permit and Facility information. The second release, scheduled for January 2012, will provide functionality for the transmittal of Inspection information. The final

release, scheduled for March of 2013, will provide functionality for the transmittal of remaining NPDES data families to include Enforcement Actions, Single Event Violations, and Program Reports. Regions should be working with their States to identify the appropriate release and schedule for data migration.

COMMITMENT CWA07: By December 31, 2010, provide a specific NPDES Compliance Monitoring Strategy (CMS) plan for each State in the Region. 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 flexibility designed into the CMS policy to target the most significant sources with potential to impact water quality. At end of year provide for each State a numerical report on EPA and state inspection plan outputs, by category and subcategory.

Indicator Measure CWA 08 for NPDES Compliance Monitoring Strategy (CMS). During FY 2011, OC and the Regions will complete work initiated in FY 2010 on development of a Compliance Monitoring Composite Index (CMCI) for the NPDES Compliance Monitoring Strategy (CMS). Starting in FY 2012, the CMCI will be used as a single summative end of year indicator of NPDES inspection program performance relative to program areas addressed in the CMS.

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

Regions should:

- Coordinate, as appropriate, with other federal agencies (e.g., U.S. Army Corps of Engineers, Natural Resources Conservation Service (NRCS), Fish and Wildlife Service, etc.) which have significant roles in wetlands protection through the use of memoranda of understanding and memoranda of agreement or other appropriate mechanisms.

- Begin to use the new national tracking system if it is ready for implementation in FY 2011, or modify the existing data base, in consultation with HQ, to more completely and transparently track EPA 404 enforcement actions, including referrals form the Corps of Engineers and the identification of repeat and flagrant violators

- 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.

- Implement existing Regional cross agency 404 enforcement training programs between state and federal agencies and begin implementing new efforts identified by HQ to cross-train inspectors and to train other federal and state agencies and stakeholders to identify CWA 404 violations.

C. CWA Section 311 – Oil Pollution Act

Regions should:

- Check compliance monitoring at facilities that have large quantities of oil and may have a close proximity to population centers and/or critical infrastructures (such as drinking water intakes) and are subject to spill prevention and facility response planning SPCC or FRP requirements to ensure that plans are adequate, meet the regulatory requirements, and are implemented as shown by a commitment to resources and training.

- Routinely review spill notification reports, inspection reports, and other available data to determine if routine noncompliance or the risk of spills from oil storage, including pipelines, is being adequately addressed. Take appropriate action to address spills of oil and hazardous substances that have occurred.

6. Reset Our Relationships with States

Every Region and State, working together, should 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) all to the table together, identifies and discusses 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, etc.

Regions should:

- Hold annual planning meetings with each State to develop collaborative annual work plans.

Convene routine and regular (quarterly)[6] meetings between the Region and State to discuss progress towards meeting annual permitting and enforcement commitments, and how the State has been performing overall in the NPDES program.

- Where States are not meeting performance expectations, Regions should take action to enforce to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions need to take action when necessary to communicate what things need attention to achieve goals of the federal environmental laws and ensure a level playing field between States. Where States are not taking enforcement actions in response to serious violations, Regions are directed to take federal action.

[6] These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is strongly suggested as a best practice for ensuring progress in meeting goals. Regions may rely upon existing communications with states when they meet the intent of this section.

- Conduct a sufficient number of oversight NPDES inspections to ensure the integrity and quality of each State or Tribe with primacy compliance monitoring programs. The 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 the State Review Framework (SRF) for the NPDES program (see section VI.G.), and associated corrective actions identified in the SRF reports.

- Consider the following information when conducting state program oversight:
  - number of SNCs *identified* (and percent of universe), especially those related to effluent exceedances or illegal discharges
  - number (and percent) addressed in a timely and appropriate manner
  - number of Watch List facilities per region
  - results of SRF and permit quality reviews and progress in correcting identified issues.

- Consult with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs.

COMMITMENT CWA 09: Regions should submit the collaborative EPA/State annual work plans addressing NPDES permitting, compliance monitoring, and enforcement activities, including work-sharing, to the Office of Compliance and the Office of Wastewater Management by September 30, 2010 for FY 2011 activities.

7. 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 2010, the Regions should manually report using instructions specified in the multi-program fiscal year reporting guidance memorandum.

- Regions should use, and States should consider using:

  - the Interim Significant Noncompliance Policy for CWA Violations Associated with CSOs, SSOs, CAFOs, and Storm Water Point Sources (i.e., Interim WW SNC Policy); and

  - the Regional Guidance for Tracking CWA NPDES Inspection-Related Violations and Wet Weather Significant Noncompliance

for reporting inspections conducted, violations identified (including single event violations or SEVs), and Wet Weather SNC determinations and resolutions in the national data system (i.e., PCS or ICIS-NPDES) as specified in the guidance.

- Regions should work with the States and Tribes to verify that their compliance and enforcement data is input into national databases.

- Regions should:
    - Enter all federal enforcement cases into national databases.
    - Enter all federal civil judicial, non-CERCLA consent decrees into ICIS.
    - Enter SRF NPDES program information into the SRF Tracker (see section VI.G.).
    - Distinguish State information from Indian country information.
    - Encourage facilities and States to use NetDMR to report DMR information to ICIS-NPDES.

- 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. EPA encourages States to expend their use of the national databases to include compliance and enforcement data that pertains to the entire NPDES universe. Regions will work with the States and Tribes to accomplish these goals.

- Regions should review reporting practices to ensure that oil and hazardous substance spills are timely and accurately reported to the National Response Center (NRC)

- Regions should make information available to communities, including Native American and Alaskan Natives, who lack access to the internet.

8. Relevant Policies and Guidances

Additional information about OECA's Clean Water Act programs can be found at:
http://www.epa.gov/compliance/monitoring/programs/cwa/index.html
http://www.epa.gov/compliance/civil/cwa/index.html

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 (UIC) Program

EPA's focus on drinking water systems, including those in Indian country, is essential to protecting communities from the acute and chronic effects of drinking water that fails to comply with the SDWA. OECA worked with the Office of Ground Water and Drinking Water

(OGWDW), Regions, States, and Tribes with primacy to implement a new Enforcement Targeting Tool (ETT) and Enforcement Response Policy (ERP). The ETT and ERP emphasize a focus on high-priority systems, those with health-based violations or monitoring or reporting violations that can mask acute health-based violations.

The ETT assigns numerical values to violations based on their severity, applies the values in a formula, and generates a score for each violating public water system (PWS). The higher a PWS (Public Water Supply) score, the more serious is its overall noncompliance. A PWS with a score of 11 or higher is a high priority system for primacy agency or EPA enforcement response and return to compliance. OECA's long term goal is to ensure that all systems with scores of 11 or higher are returned to compliance or are put on a path to compliance (see the ERP for details) within 6 months. Additionally this approach is designed to better help OGWDW meet its GPRA measures.

The ETT and ERP apply equally to EPA direct implementation in States without primacy and Indian country and implementation by States and Tribes with primacy.

1. Link with Top Office of Water Priorities

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

- Safeguarding Public Health: As part of aggressively going after pollution that matters to communities, OECA will be using all enforcement and compliance tools to assure clean drinking water, which is so essential to community health, with continued attention to clean drinking water in schools, to protect children's health, and on tribal lands

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

The ETT's scoring formula focuses enforcement resources on those systems with health-based violations, those with major monitoring and reporting violations, and those that show a history of violations across multiple rules. Its system-based methodology is intended to ensure consistency and the integrity of the PWSS national enforcement program and to provide increased protection for communities.

- Regions, States and Tribes with primacy will use the prioritized list produced by the ETT to identify the systems that will be addressed first, i.e., those with scores of 11 or greater, as they work to reduce the number of systems with violations that are not addressed and increase those that have returned to compliance. If all systems in a Region, State or Tribe with primacy with scores of 11 or greater are addressed, those primacy entities are expected to continue addressing the remaining systems in priority order and returning them to compliance.

Compliance at systems in Indian county should be considered a high priority for Regions and Tribes with primacy when developing strategies for targeting compliance assurance and enforcement work to ensure both sustained compliance and, where there are violations, a timely return to compliance. Regions should initiative return to compliance efforts at systems in Indian

country as soon as practicable after noncompliance is identified. This is essential as EPA transitions from drinking water systems in Indian country from being a national initiative back into the overall program.

COMMITMENT SDWA02-: Regions, as the primacy authority (and States and Tribes with primacy, should commit to address a specific number of systems between July 2010 and June 2011 (this number should be based on the historical number of "new SNC systems" that were generated during an average year when EPA utilized the former SNC approach). The Regions should provide the numbers to be addressed broken down by State and Tribe with primacy, and by EPA in non-primacy areas (e.g., Wyoming and Indian country), in the comment field. The specific systems to be addressed will be identified using the prioritized list produced by the ETT, to ensure that the highest-priority systems are addressed first. The new ERP requires that systems with violations are addressed and returned to compliance.

At mid-year FY2011, EPA may implement a new commitment measure reflecting use of the ETT.

3. Reset Our Relationships with States

Using the new ETT and ERP, Regions should work with States and Tribes with primacy in an oversight capacity and through direct implementation in non-primacy States and Indian country to ensure that priority PWSs are identified, addressed, and returned to compliance.

- Convene routine and regular (quarterly)[7] 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.

- Where States are not meeting performance expectations, Regions should take action to ensure serious violations are addressed. Regions should focus oversight resources on the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions should also take action when necessary to communicate what issues need attention to achieve the goals of federal environmental laws and ensure a level playing field between States.

- Regions should use strategic Performance Partnership Agreements/ Performance Partnership Grants, other grant workplans, and monthly or quarterly meetings/calls to review the results of using the ETT and ERP to establish expectations and to determine respective levels of effort. Headquarters will provide quarterly data to update the ETT so that the Regions, States and Tribes can determine which systems have a score of 11 or more points. When high priority systems are addressed by a Region, State, or Tribe, these count toward the Regional commitment number for the Fixed Base.

[7] These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is strongly suggested as a best practice for ensuring progress in meeting goals. Regions may rely upon existing communications with states when they meet the intent of this section.

- For PWSs scoring 11 or more using the ETT, Regions should report to headquarters at midyear and end of year on the number of systems addressed (i.e., on the path to compliance) and returned to compliance.

- EPA should consult with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of tribal primacy programs. As part of such consultation, Regions and Tribes should discuss plans to integrate the new ETT and ERP with the "EPA Policy for the Administration of Environmental Programs on Indian Reservations" and the "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy" to effectively address high priority violations at PWSs in Indian country.

4. Improve Transparency

OECA headquarters will report on progress in returning systems to compliance in its annual national compliance report posted on the EPA website at http://cfpub.epa.gov/compliance/resources/reports/accomplishment/sdwa/

- Compliance data should distinguish State information from Indian country information.

- Information should be made available to communities, including Native American and Alaskan Natives, who lack access to the internet.

- OECA will look at ways of making the PWS report more useable and understandable by the public.

5. Relevant Policies and Guidances

Additional information about OECA's SDWA programs can be found at:
http://www.epa.gov/compliance/monitoring/programs/sdwa/index.html
http://www.epa.gov/compliance/civil/sdwa/index.html

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 addresses waste pollution problems through the following RCRA programs:

- Hazardous Waste Subtitle C Program
- Underground Storage Tank Subtitle I program
- Imminent and Substantial Endangerment

Readers are urged to review the RCRA Compliance Monitoring Strategy for 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. Statutory and Regulatory Requirements

RCRA dictates minimum inspection frequencies for TSDFs: annually for TSDFs *operated* by state/local governments, and biennially for non-governmental TSDFs. The first two commitments 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. These inspections should be Compliance Evaluation Inspections (CEIs).

COMMITMENT RCRA01: Project by State, and Indian country where appropriate, the number of operating TSDFs, to be inspected by the Region during the year[8]. Regions must commit to inspect at least two (2) TSDFs in each State/Indian country unless OECA approves a deviation from this requirement. Financial responsibility is a component of this inspection requirement (see also RCRA04).

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

COMMITMENT RCRA04: Project by State and Indian country the number of financial assurance mechanisms to be inspected by the Region during the year. Regions must commit to review at least four (4) financial test and/or corporate guarantee submissions per year in each State for compliance with the closure and post-closure regulations. Regions may instead choose to review other types of financial assurance instruments for facilities that did not have a financial assurance review during the FY 2008-FY 2010 national enforcement priority. The reviews should be formal Financial Records Reviews, and take place within 90 days after the submissions are received[9].

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[8] Currently there is only one TSD in all of Indian country.

[9] RCRA04 is based upon a general statutory requirement that financial responsibility compliance be included in TSDF compliance monitoring although the statute does not specify the number of evaluations.

- In FY2011, financial responsibility will transition from being an OECA National Priority to being an important part of the RCRA core program.

    - Under the financial assurance national priority, EPA inspected over half of the TSDF universe subject to financial assurance for closure/post-closure. EPA identified financial tests/corporate guarantees as the most prevalent financial assurance instruments. For closure/post-closure, the financial test/corporate guarantee made up 39% of financial instruments used and 55% of the value of those instruments. These were also the instruments that presented the highest risk to EPA and States compared to third party instruments. Unlike other financial responsibility mechanisms, the financial test and corporate guarantee do not require facility owner/operators to set aside funds to ensure proper closure/post-closure.

    - In returning financial responsibility to the core program, Regions should ensure continued review of financial test/corporate guarantee submissions since they present the greatest risk and are the most commonly-used instruments.

    - Regions are expected to focus on reviewing the universe of TSDFs not formally evaluated during the national priority, and on conducting in-depth reviews of financial test/corporate guarantee submissions.

- Consistent with RCRA Section 3004(a), OECA has established an annual commitment for financial responsibility to ensure adequate, continuing attention to this issue.

Regions are to coordinate with States to conduct these financial assurance reviews.

2. Implement National Enforcement Initiatives

The relevant FY 2011 – 2013 national enforcement initiative for RCRA programs is:

<u>Reducing Pollution from Mineral Processing Operations</u>: 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.

3. Link with Top OSWER Priorities

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

- Recycling, Waste Minimization and Energy Recovery: OECA maintains an overall enforcement presence in RCRA that indirectly supports OSWER in their work.

- Emergency Preparedness, Implementing the EPAct, Response and Homeland Security: OECA maintains an overall enforcement presence in RCRA that indirectly supports OSWER in their work.

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

a. RCRA Subtitle C Program

Regions and States should inspect pollution problems that matter to their respective communities, and develop enforcement cases that produce significant environmental benefits. Regions, States and Tribes with authorization[10] are expected to follow the guidance in the Compliance Monitoring Strategy for the Resource Conservation and Recovery Act Subtitle C Program (RCRA CMS). To enable States to address environmental problems of concern to communities, States may utilize flexibility in the RCRA CMS to deviate from their large quantity generator (LQG) requirements.[11] 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.

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 States and Regions when developing plans for respective activities in the Region. The areas of concern are:

- Surface Impoundments: OECA, with support from 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.

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[10] Currently no Tribes are authorized to implement the RCRA Subtitle C program
[11] See OECA's *Guidance for RCRA Core LQG Pilot Projects* (2007), http://www.epa.gov/compliance/resources/policies/monitoring/

- 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.

- 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.

- Electronic Waste Exports: Many electronic products constitute hazardous waste when discarded. EPA encourages safe recycling or reuse of these materials in compliance with RCRA; however, electronic waste is being increasingly illegally exported from the United States to operations in developing countries not equipped to properly manage these materials, resulting in substantial risks to human health and the environment in foreign communities.

- RCRA Corrective Action: EPA and authorized States should focus on facilities that have made no meaningful progress in achieving remedial objectives, and on financially marginal or bankrupt facilities, where use of enforcement tools are needed in order to move the facility towards construction completion. EPA Regions should use the National Enforcement Strategy for Corrective Action when assessing EPA-lead facilities and prioritizing corrective action enforcement actions.

The following performance expectations apply to Regions for FY2011. (Readers should consult the *RCRA CMS* for additional information about, conditions applicable to, and approved deviations from, these performance expectations.)

- Regions are expected to continue to provide compliance assistance, conduct compliance monitoring, and pursue enforcement to ensure that pollution problems that matter to communities are aggressively addressed.

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

- The RCRA CMS establishes minimum annual inspection expectations for LQGs: The inspections for this commitment should be CEIs. Only one inspection per facility counts towards this coverage measure.

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. Regions must commit to inspect at least six (6) LQGs in each State, and 20% in Indian country, unless OECA approves a deviation from this requirement. In the Comment Section, provide the number of federal facility LOG 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.[12]

COMMITMENT OSRE-04: For 100% of the financial test submissions received each fiscal year for corrective action with cost estimates over $5 million, determine whether the submission is in compliance. Where the submission is noncompliant, take appropriate enforcement action to address noncompliance (e.g., notice of violation). If possible, return facility to compliance by end of fiscal year.

- To lessen the reporting burden on the Regions, OECA will continue the current ACS commitment for RCRA correction action to review all financial test submissions as a measure in FY 2011, but will increase the threshold for all submittals over $5 million. The new RCRA corrective action financial responsibility measure includes the review of financial test submissions received by the States within each Region. For those States that are not authorized for corrective action, the Regions should be reviewing the financial test submissions as part of EPA's role of implementing and enforcing the corrective action program in unauthorized States. Regions that conduct financial test/corporate guarantee reviews for the RCRA Subtitle C closure/post-closure regulatory program may also review any corresponding corrective action submissions as part of the completion of this program measure.

- EPA reviewed 259 RCRA corrective actions financial responsibility instruments as part of the financial assurance priority. OECA identified financial tests/corporate guarantees as the most prevalent financial assurance instruments. For corrective action, the financial test/corporate guarantee made up 49% of financial instruments used and 70% of the value of those instruments.

COMMITMENT RCRA-05: In combination, Regions should commit to investigating a total of 10 high priority open dumps using OECA's targeting strategy, to be developed in FY 2010. This commitment is intended for FY 2011 only, the transition year when the priority returns to the core program.

- Regions are expected to provide compliance assistance, conduct compliance monitoring, and pursue enforcement to address waste management and illegal dumps in Indian country and ensure effective transition of the Indian Country Priority Waste Focus area to the base program. In particular, Regions are expected to continue using the OECA-supplied list of high-priority open dumps to investigate and, as appropriate, use federal enforcement to facilitate their clean up or closure, and deter the creation of new illegal dump sites. OECA is coordinating these efforts with the Office of Solid Waste and Emergency Response to address illegal and open dumps in Indian country.

[12] See OECA's *Guidance for RCRA Core LQG Pilot Projects* (2007), http://www.epa.gov/compliance/resources/policies/monitoring/

COMMITMENT RCRA-06: For non-BIA schools in Indian country, project the number of compliance assistance visits designed to ensure the proper and compliant treatment, storage, and disposal of hazardous waste. This commitment is for FY 2011 only. (Note: Tied to, and reported with, OSWER Measures MW9, TR1, and TR2).

- Appropriate activities include at a minimum, ensuring that schools in Indian country with known or reported environmental compliance problems are inspected in a timely manner.

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

EPA is committed to ensure that underground storage tanks (USTs) are operated in a manner that is protective of human health and the environment. Agency compliance assurance and enforcement activities will focus on those facilities posing the greatest risk to human health and the environmental.

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. Regions enforcement efforts should ensure that owner/operators of RCRA Subtitle I regulated facilities properly prevent and detect releases and take appropriate corrective action when releases occur.

The goal of the federal compliance assurance and enforcement activities is to attain and maintain a high level of compliance within the regulated community. Generally, federal compliance assurance and enforcement will complement and provide oversight of state activities. EPA should implement the UST program in Indian country in coordination with Tribes and tribal consortium because RCRA precludes EPA from authorizing tribal UST programs.

States have primary responsibility for monitoring compliance and initiating enforcement action against violators of the UST requirements. 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 on a broader, more national forum.

- Regions should work with States and Tribes to assure compliance with UST requirements.

- Regions should target 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 multiple UST facilities;
  - Owners and operators of USTs located in Indian country;
  - Owners and operators of large facilities with multiple USTs;
  - Owners and operators of facilities with UST that endanger sensitive ecosystems or sources of drinking water; and

- Federal facilities.

- Regions are expected to take enforcement actions and assess penalties, as appropriate, to ensure optimum deterrence effect and compliance impact.

5. Reset Our Relationships with States

RCRA compliance monitoring is a collaborative effort between OECA, Regions, and authorized States. (EPA has direct implementation responsibility in Indian country.) 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.

- Regions help ensure that the most serious environmental problems caused by non-compliance are being 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 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[13] (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.

- Where States are not meeting performance expectations, Regions should take action to ensure serious violations are addressed. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions need to take action where States are not addressing serious violations to communicate necessary improvements to state programs in order to achieve goals of the federal environmental laws and ensure a level playing field between States.

- Authorized 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 consults with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs

RCRA corrective action is implemented by EPA and 43 authorized States and territories. Under the National Enforcement Strategy for Corrective Action (NESCA) Regions should be working

[13] These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is strongly suggested as a best practice for ensuring progress in meeting goals. Regions may rely upon existing communications with states when they meet the intent of this section.

closely with States to coordinate and assist them in their targeting and enforcement activities for RCRA corrective action. NESCA will provide support to Regions and States to address special considerations that arise in the enforcement arena, such as the importance of enforceable requirements in permits and orders, dealing with companies having financial difficulties, considerations for the use of CERCLA, enforceability of institutional controls, and increasing the transparency of enforcement efforts. As additional issues are encountered, OECA will supplement this effort with additional analysis. OECA in conjunction with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is developing training on RCRA corrective action enforcement. OECA will provide training to both Regions and States on how to review financial test and corporate guarantee submissions for compliance.

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;
- Results and highlights of compliance assistance efforts; 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 Guidances

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

B. Toxic Substances Control Act (TSCA)

The Toxic Substances Control Act of 1976 provides OECA with authority to enforce reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures and the production, importation, use, and disposal of specific chemicals including lead, polychlorinated biphenyls (PCBs), and asbestos.

OECA addresses toxics problems through the following TSCA programs:

- TSCA New and Existing Chemicals Programs (note: the term New and Existing Chemical Programs describes TSCA section 4, 5, 6, 8, 12 and 13).
- TSCA Lead Risk Reduction Program
- TSCA Legacy chemicals Program (PCBs and Asbestos Program which includes Worker Protection Standards, the Model Accreditation Plan program and the Asbestos Hazard Emergency Response Act (AHERA))

1. Link with Top Office of Pesticides, Prevention, and Toxics Priorities

OECA addresses the top Office of Pesticides, Prevention, and Toxics priority for TSCA programs in the following way:

- Reducing Lead Poisoning by pre-education renovation: OECA addresses the OPPTS priority by overall direction to Regions to enforce Section 406 in non-authorized States, including screening for appropriate follow-up to tips and complaints alleging potential Section 406 violations in tribal areas and non-authorized States.

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. Lead-based paint is particularly dangerous to children. Exposure may cause reduced intelligence, learning disabilities, behavior problems and slowed physical development. Because lead-based paint is found in pre-1978 buildings, it is more common in low income and minority communities. Asbestos in schools, if not properly managed, can expose children, teachers and other school staff to harm that may not manifest for years. PCBs bioaccumulate and thus cause a variety of adverse health effects. All of these chemicals can also affect custodial workers, building renovators and similar workers. Asbestos and PCBs are generally found in older buildings.

a. 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 the manufacture and importation of new chemical substances to prevent unreasonable risk to human health and the environment. Regions implementing the New and Existing Chemical Program should:

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

- Through inspections, compliance assistance and appropriate enforcement actions, focus on ensuring facility compliance with 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:
    - Nanotechnology – especially carbon nanotubes,
    - Short chained and other chlorinated paraffins, and
    - Other priority chemicals

- Target existing chemical requirements for compliance with TSCA 8(e) violations.

- Track and prioritize tips and complaints and follow-up, as needed. Regions implementing this program are also expected to follow-up on all referrals received from headquarters, States, Tribes, and the public.

In addition, Regions should:

- Review and follow-up, as appropriate, disclosures submitted under the OECA Audit Policy and Small Business Policy. Under TSCA New and Existing Chemicals Programs, self disclosures received by all regions not implementing this program may be forwarded to OECA for appropriate action.

- Regions not implementing this program are to refer tips and complaints to the TSCA New and Existing Chemicals Programs Enforcement Program for follow-up, and to respond to questions from the regulated community.

- Provide legal and technical enforcement case support, and either obtain additional information through inspections, subpoena and federal actions as appropriate, or determine that follow-up is not necessary. The TSCA New and Existing Chemicals Programs Enforcement Program will assist Regions in targeting inspections.

COMMITMENT TSC01: Project the number of federal TSCA New and Existing Chemicals Programs inspections, including those at federal facilities, for regions maintaining an investment in core TSCA (sections 4, 5, 8, 12 and 13). In the Comment Section, provide the number of federal facility inspections.

b. TSCA Lead Risk Reduction Program

Recent data show that tremendous progress has been made in the continuing effort to eliminate childhood lead poisoning as a public health concern. EPA has measured progress by tracking reductions in the number of children with elevated blood lead levels of 10 micrograms per deciliter or higher. Data released in 2009 by the Centers for Disease Control and Prevention indicate that the incidence of childhood lead poisoning, defined as above, has declined from approximately 1.6 percent of children in 2002 to 0.9 percent of children in 2006. The data show that EPA was on track to meet ambitious federal government-wide goals to eliminate childhood lead poisoning as a public health concern at those blood levels by 2010.

At the same time, new data are revealing adverse health effects to children at lower levels than previously recognized.[14] EPA, therefore, plans to begin measuring progress by tracking reductions in the number of children with elevated blood lead levels of 5 micrograms per deciliter or higher. Thus, even though initial gains have been encouraging, EPA wishes to achieve further reductions in the incidence of children with these lower, but still significantly elevated, blood levels.

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[14] U.S.EPA. Air Quality Criteria for Lead (September 29, 2006) http://cfpub.epa.gov/ncea/CFM/recordisplay.cfm?deid=158823

Rogan WJ, Ware JH. Exposure to lead in children – how low is low enough? N Engl J Med.2003;348(16):1515-1516 http://www.precaution.org/lib/rogan.nejm.20030417.pdf

Lanphear BP, Hornung R, Khoury J, et al. Low-level environmental lead exposure and children's intellectual function: an international pooled analysis. Environ Health Perspect. 2005; 113(7):894-899 http://www.pubmedcentral.nih.gov/articlerender.fcgi?doi=10.1289/ehp.7688

EPA's Lead Risk Reduction program contributes to the goal of alleviating the threat to human health, particularly to young children, from environmental lead exposure in the following ways:

- Establishes standards governing lead hazard identification and abatement practices and maintains a national pool of professionals trained and certified to implement those standards;
- Provides information to housing occupants so they can make informed decisions and take actions about lead hazards in their homes;
- Establishes lead-safe work practice standards for renovation, repair and painting projects in homes and child-occupied facilities with lead-based paint;
- Works to establish a national pool of renovation contractors trained and certified to implement those standards.

For more information please visit http://www.epa.gov/lead.

Authorized States and Tribes, and Regions where States and Tribes are not authorized, are expected to:

- Target regulated activities located in areas of interest such as areas with known Elevated Blood Levels or concentrations of at-risk dwellings, to reduce their number through compliance monitoring and enforcement, regardless of the underlying source of contamination (i.e., lead in paint, water pipes, folk medicines, etc).

- Implement an integrated strategy for reduction of lead poisoning in children, appropriate for the Region, State or Tribe, for enforcing all of the components of the lead-based paint and other lead poison control programs.

- Enforce Sections 1018, 402 and 406 in non-authorized States.

- Screen for appropriate follow-up to tips and complaints alleging potential Sections 1018, 402 and 406 violations in tribal areas and non-authorized States.

- In States without authorized Section 402 programs, regions should conduct compliance monitoring activities at renovation businesses and abatement firms, and audits of training providers. These activities should be briefly described in the work plan submission as a rationale for any trade-offs with current compliance and enforcement resources for the lead-based paint program.

- Develop integrated strategies for areas of concern, determine the compliance status of individual regulated entities; have primary responsibility for ensuring adequate inspection coverage of the regulated universe; and alert EPA to regulatory implementation issues in the field.

In addition, Regions should:

- Develop integrated strategies that include methods to better target compliance activities, such as partnering with state/tribal and local health care providers to identify geographical lead poisoning hot spots.

- Begin to commit at least 50% of current lead-based paint inspections to establish and demonstrate a credible Renovation, Repair and Painting (R, R & P) compliance monitoring and enforcement program.

- Encourage States to seek delegation.

- Appropriate oversight of authorized state/tribal Section 402 and 406 programs.

- Because of variations in housing arrangements at federal facilities, particularly at some military bases, regions should closely investigate the applicability of the lead regulations to the particular facilities housing.

COMMITMENT LED01: Number of Section 1018/402/406 federal inspections (including those conducted by Senior Environmental Employment Program personnel (SEEs), including those at federal facilities. In the Comment Section, provide the number of federal facility inspections.

c. Legacy Chemicals Program (PCBs and Asbestos)

The Legacy Chemicals Program attempts to lessen chemical risk and exposure through reductions in use and safe removal, disposal and containment of certain prevalent, high-risk chemicals, known generally as legacy chemicals. Some of these chemicals were used widely in commerce and introduced into the environment before their risks were known. The LCP currently focuses on providing assistance to Federal agencies and others with responsibility for ensuring proper use of polychlorinated biphenyls (PCBs) and implementing statutory requirements to address asbestos risks in schools.

TSCA PCBs

PCBs are a persistent toxin (PBT) that bioaccumulates in food chains and poses serious risks to human health and the environment. Although PCB manufacture is banned, certain uses (transformers/capacitors) are allowed under conditions which ensure that PCBs are managed properly and not released into the environment. PCBs have also been identified in caulk used in schools, raising concerns over potential exposure to school children, teachers, and other school staff. PCBs (including export for disposal) are of international concern.

Authorized States and Tribes, and regions where States and Tribes are not authorized, are expected to:

- Follow-up on tips and complaints based on potential risk, including spills. Response may include referral to States that have TSCA PCB compliance monitoring grants.

- Conduct inspections in each State and Indian country to assure equitable protection. For States with TSCA PCB grants, coverage may be provided by the State rather than EPA.

- Use targeting tools to identify the most important PCB sources of pollution problems and the most serious violations, including use of screening tools/approaches, such as the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), and other information, such as community input, to support targeting of enforcement actions and to enhance performance reporting.

- Ensure that all PCB commercial storage and disposal facilities within the Region are inspected at least once every three years. These inspections may be conducted in conjunction with RCRA TSD inspections provided the inspector comprehensively evaluates compliance with both programs. Regions committing to inspect less than 33% of commercial storage and disposal facilities in a given year should provide a brief description in the comment field of how they will ensure that all commercial PCB storage and disposal facilities are inspected within a three year period. The description should address inspection targeting factors including data on prior compliance history, and/or environmental data.

- Report the total number of PCB inspections at facilities other than those at commercial storage and disposal facilities.

- Focus their enforcement resources to confirm that approved closure/post-closure plans and cost estimates reflect the current waste management and contamination situation at PCB storage and disposal facilities.

- Address PCBs found in caulk in schools by providing information to Local Education Agencies/schools, responding to tips and complaints, and support to enforcement, as appropriate.

- Continue to implement use of PCB Tablets and PCB inspection software in inspections.

COMMITMENT PCB01: Report the total number of EPA PCB inspections, including those at TSDFs that are PCB disposal facilities and at federal facilities. In the Comment Section, provide the number of federal facility inspections. EPA data should be reported on a state-by-state basis. For States where the state agency will provide inspection coverage under PCB grant, indicate in the ACS Comment field the estimated number of inspections that the State will conduct. This number should not be included as part of the regional ACS PCB inspection commitment number.

TSCA Asbestos

Asbestos may be present in schools and, if disturbed and released into the air, poses a potential health risk to school children, teachers, custodial staff, and others in the school. There are no immediate symptoms of exposure; health effects may manifest 15 or more years after exposure. EPA requires Local Education Agencies (LEAs) to inspect for asbestos. When asbestos is found, LEAs must provide notification to parents and teachers, develop and implement management

plans so that asbestos is not disturbed, or is properly removed, during renovations or other activities (i.e., drilling to install electrical or communications lines).

Authorized States and Tribes, and Regions where States and Tribes are not authorized, are expected to:

- Investigate and respond (including taking enforcement action where appropriate) to any tips/complaints containing allegations which provide a reasonable basis to believe that a violation has occurred, within a reasonable period of time. Response may include referral to States that have TSCA asbestos compliance monitoring grants.

- Inspections should be conducted in each State to assure equitable protection, and action taken to ensure compliance. State inspections under the TSCA Asbestos/AHERA grant can provide coverage for those States instead of the Region.

In addition, Regions are to:

- Encouraged to coordinate, as appropriate, TSCA asbestos inspections at LEAs with inspections being conducted under other TSCA programs (e.g., lead, PCB in caulk) and/or Clean Air Act asbestos NESHAP inspections.

- Ensure compliance monitoring activities are undertaken in each State and in Indian country.

- To further the goal of equitable protection, OECA recommends that Regions conduct inspections of LEAs in each State not receiving grants funds to conduct inspections. Regions will need to provide justification for the number of inspections being projected. Regional inspections are recommended to be targeted at LEAs with one or more of the following characteristics: building stock of an age that is more likely to contain asbestos, particularly those that are undergoing renovation or energy efficiency upgrades that may disturb asbestos; at LEAs that have never been inspected; at LEAs that have not been inspected within the past ten (10) years; at LEAs that have previously been found in violation and/or been subject to enforcement action; and at private, religious, and charter schools. Websites for TSCA Asbestos Information on LEAs:
    - Department of Education – Public School LEAs: http://nces .ed.gov/pubs2010/2010306/tables.asp
    - US Charter Schools – Current number of Charter Schools, by State: http://www.uscharterschools.org/pub/uscs_docs/sp/index.htm
    - Parochial School and Diocesan Locator: http://www.ncea.org/news/SchoolDiocesanLocator.asp and http://www.catholicusa.com/catholic_schools_online/catholic_schools.htm

- 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).

- Report their inspections commitments, by State, and consider the compliance monitoring effort being undertaken by a State that is inspecting on behalf of the Agency.

- For inspections conducted with EPA credentials, review and provide feedback that addresses the quality of the inspection/reports and the action taken by the Region.

COMMITMENT ASB01: Report the number of federal TSCA asbestos inspections, including those at federal facilities. In the Comment Section, Regions should provide the number of federal facility inspections. For States where the state agency will provide inspection coverage under Asbestos grant, indicate in the ACS Comment field the estimated number of inspections that the State will conduct. This number should not be included as part of the ACS Asbestos inspection commitment number.

3. Reset Our Relationships with States

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 (quarterly)[15] 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. Where States are not meeting performance expectations, Regions should take action to enforce to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions need to take action when necessary to communicate what things need attention to achieve goals of the federal environmental laws and ensure a level playing field between States.

On a program specific basis:

a. PCBs

- Work with states/tribes operating under TSCA compliance monitoring grants to address these priorities as well as state/tribal priorities.

- Submit mid-year and end-of-year evaluation reports to OC for each TSCA compliance monitoring grant awarded to States and Tribes.

- Continue the use of electronic technology in the field.

[15] These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is strongly suggested as a best practice for ensuring progress in meeting goals. Regions may rely upon existing communications with states when they meet the intent of this section.

- Evaluate, through oversight inspection(s) or other means, the quality of inspections as part of good grant management for those States that receive the TSCA PCB compliance monitoring grants.

- Ensure that authorization agreements, which authorize employees of state and tribal governments to conduct inspections on EPA's behalf, are in place with States and Tribes that receive TSCA Compliance Monitoring grants for PCBs, and that training requirements are met.

- Where inspections are conducted by States with EPA credentials, review state inspection reports, provide feedback to States, and take action as appropriate. 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).

- Consult with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs

b. TSCA Asbestos

- Ensure inspection coverage in each State by EPA, Senior Environmental Employment Program (SEE), or state/tribal inspectors.

- Where States or Tribes utilize grant funds to conduct inspections on behalf of the Regions, Regions must ensure that the States or Tribes are implementing an adequate TSCA asbestos inspection program, provide a rationale where programs are not adequate, and specify corrective measures.

- Evaluate, through oversight inspections or other means, the quality of inspections as part of good grant management for those States and Tribes receiving grant funds to conduct TSCA asbestos inspections.

- Encourage States and Tribes to develop their own regulations and apply for a "waiver" where applicable.

- Ensure that authorization agreements, which authorize employees of state and tribal governments to conduct inspections on EPA's behalf, are in place with states/tribes that receive TSCA Compliance Monitoring grants for TSCA Asbestos (non-waiver states only).

- Consult with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs

c. TSCA Lead-Based Paint Program (LBP)

To ensure national consistency, OECA's role is to provide oversight of Regional LRRP programs.

- Regions are expected to provide updates on actions and outcomes through at least quarterly[16] discussions with OECA (generally, through existing channels of communication).

- Regions should focus primarily on State/Tribal program oversight and capacity-building to ensure States and Tribes are appropriately using tools to help ensure compliance, and more importantly, integrating those tools to help effectively reduce elevated blood lead levels (EBLLs) and LBP hazards particularly in identified "areas of concern"; ensure inspection coverage in federal jurisdictions; support States/Tribes on complex or multi-State/Tribal compliance issues; and consult with States/Tribes to identify issues that may warrant areas of national focus in federal jurisdictions.

- OECA will use a variety of mechanisms to ensure adequate oversight, including regular meetings and consultations with States/Tribes, Annual Commitment System (ACS) grant reviews, and oversight inspections.

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 waiver States, ensure compliance and enforcement data provided in aggregate form as part of midyear and end of year evaluation reports. (Not applicable to Lead program)

- Enter all federal inspections (including ICDS) and enforcement cases into ICIS.

- Publicize regional enforcement actions taken through press releases.

- Compliance data should distinguish State information from Indian country information.

- Information should be made available to communities, including Tribes, who may lack access to the internet.

5. Relevant Policies, and Guidances

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

[16] These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is strongly suggested as a best practice for ensuring progress in meeting goals. Regions may rely upon existing communications with states when they meet the intent of this section.

http://www.epa.gov/compliance/monitoring/programs/tsca/asbestoes.html

Policies and guidance pertinent to OECA's FY 2011 priorities are the following:

- September 30, 2004 memorandum entitled *Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA.*
- August 5, 2005 memorandum for the *Process for Requesting EPA Credentials for State/Tribal Inspectors Conducting Inspections on EPA's Behalf.*

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

EPA and the public rely on pesticide manufacturers and formulators to provide accurate information about pesticides and associated risks. Unregistered and ineffective antimicrobials, as well as products making false or misleading public health protection claims, pose a potential public health threat when the public makes inappropriate choices based on inaccurate or misleading information. Products used in agricultural or structural pest control settings may pose health risks to those working with or exposed to those chemicals.

A major focus of the FIFRA program is 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. Under FIFRA, EPA directly implements primary use enforcement responsibility in Indian country. However, through cooperative agreements, Tribes are allowed to enforce similar provisions under their own code.

1. *Link with Top Office of Pesticide Programs Priorities*

OECA addresses top Office of Pesticide Programs (OPP) priorities for the FIFRA program in the following ways:

- Pesticide Occupational Worker Safety: FIFRA's Worker Protection Standards provide critical protection to certain workers and handlers of pesticides in agricultural, nursery, greenhouse, and forestry occupations. OECA addresses this priority area in both the State Grant Guidance and by including aspects of this priority in both the Fumigant/Fumigation and Worker Protection focus areas of the NPM Guidance.

- Antimicrobial Hospital Disinfectants Efficacy/Misbranding: This area directly impacts public health by ensuring the safe and effective use of disinfectants in hospitals. OECA has been cooperating with OPP for several years in this effort and will continue that support through recognition of the antimicrobial initiative as a specific expectation in the core FIFRA compliance monitoring and enforcement program.

Pesticides and Water Resource Protection: Protecting water bodies from pesticide contamination helps assure the safety of those water resources. OPP has focused regulatory efforts, including establishing restrictive use requirements, on key pesticides of concern. In

addition, a recent court ruling has determined that pesticides used in aquatic settings are not exempt from regulation under the Office of Water's National Pollution Discharge Elimination System (NPDES). Activities are under way to develop a process to bring pesticide use into compliance with the NPDES regulations.

- Soil Fumigation: Due to a re-evaluation of the risks associated with the use of soil fumigants, OPP has recently announced changes to product labeling and use directions for the use of these highly toxic pesticides. In addition to compliance monitoring and enforcement relating to the use of all fumigants, OECA is specifically addressing this priority in the NPM Guidance through outreach/compliance assistance activities to support implementation of the new label changes for soil fumigants. Soil fumigation is included in both the Fumigant/Fumigation and Worker Protection focus areas. OECA's State Grant Guidance also addresses soil fumigation through outreach, education, and compliance activities.

- Pesticide Container-Containment Regulation Implementation: Regulations covering pesticide container and containment requirements are still being phased in and most states/tribes are actively engaged in outreach and compliance assistance activities. OECA addresses this priority in its State Grant Guidance but is not addressing it in the NPM Guidance at this time.

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

Agricultural farm workers, pesticide applicators, other lower paid workers, and these workers' families are most likely to be at risk from failure to comply with FIFRA. For example, improper labeling or directions on fumigants can result in misapplication and serious exposure to acutely toxic pesticides, leading to hospitalization or death. Risks posed by fumigants and other pesticides to workers and nearby communities can last for several days or weeks after an application. Due to the proximity of housing to treated agricultural areas, farm worker families have been found to have higher levels of exposure to pesticides than non-farm families.

The goal of the FIFRA compliance monitoring and enforcement program is to assess the behavior and performance of the regulated universe and to address products that violate FIFRA that could adversely affect the quality of life in our communities.

EPA pesticides programs are expected to maintain a strong core FIFRA compliance monitoring and enforcement program which ensures compliance with and effective enforcement of FIFRA regulatory requirements. The core program should include compliance and enforcement activities covering: pesticide registration and labeling, data quality requirements (FIFRA Good Laboratory Practice Standards), efficacy of hospital disinfectant products, pesticide producing establishment registration and annual production data reporting, import and export requirements, and registrant reporting of unreasonable adverse effects. The core program also supports efforts to protect human health and the environment, including water resources, through support and oversight of state and tribal monitoring and enforcement of pesticide use/misuse.

In conducting this work, Regions are expected to place special emphasis on the key focus areas identified below. (State and tribal programs may also be involved in supporting these activities, as appropriate, by including relevant activities in the negotiated cooperative agreements.)

Focus Area A: 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.

In FY2008, OPP released a Reregistration Eligibility Decision (RED) that requires important label changes incorporating significant new safety measures for soil fumigant pesticides to increase protections for agricultural handlers, workers and bystanders (e.g., people who live, work, or otherwise spend time near fields that are fumigated). The RED addresses the fumigant pesticides chloropicrin, dazomet, metam-sodium/metam-potassium (including MITC), and methyl bromide. Labeling changes required by the RED are expected to be in the market place by 2010. Consistent with OPP's fumigant initiative, outreach and compliance monitoring will be promoted to make users aware of future labeling changes for soil fumigants.

The fumigant focus area encompasses 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 FY2011, Regions are expected to implement one or more of the compliance monitoring approaches identified below and to initiate appropriate enforcement actions.

States have primary responsibility for monitoring compliance and initiating enforcement action against violators of pesticides 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 on a broader, more national forum.

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 Producer Establishment Inspection (PEI) inspection opportunities, with special emphasis placed on the priority fumigants frequently involved in exposure incidents (i.e., sulfuryl fluoride, methyl bromide, aluminum phosphide, zinc phosphide, metam-sodium, and chloropicrin). State PEI inspections can be applied toward meeting negotiated PEI inspection commitments within existing cooperative agreements. PEI inspections conducted by regional inspectors will continue to help build regional expertise. Physical sampling and analysis is encouraged.

- Regions should work with their States to identify opportunities for fumigation use/misuse inspections in a variety of venues, with special emphasis on those use patterns frequently associated with exposure incidents (i.e., residential buildings, commercial grain elevators and granaries, on-farm granaries, seed warehouses, and agricultural crop soils). Where appropriate, these State inspections may be applied toward negotiated cooperative agreement use/misuse inspection commitments.

- 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.

- Consistent with the State Grant Guidance, States should conduct education, outreach and compliance assistance activities for communicating the new labeling requirements for soil fumigants. Although implementation of the soil fumigant RED labeling requirements will focus on training and compliance assistance through mid-2012, in instances of misuse or abuse, appropriate enforcement response should be taken.

Enforcement actions should be pursued under both State and Federal authorities, as appropriate. Significant use or product compliance violations discovered during state investigations should be considered for referral to EPA for federal enforcement, when appropriate. Regions should work with States 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 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.

Focus Area B: Imports

EPA's enforcement program continues to address the illegal importation of noncompliant pesticide products into the United States by bringing enforcement actions against importers and others; providing compliance assistance to manufacturers, importers and brokers; and working with other governments, agencies and stakeholders to prevent and reduce risks of unsafe products entering our country.

Importation of pesticides and devices is governed by FIFRA Section 17(c). All imported pesticides intended for use in the United States must be registered as required by Section 3 of

FIFRA before being permitted entry into the US. Pesticide devices that are imported, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular. Pesticides and devices must be properly labeled in accordance with FIFRA and Title 40 of the Code of Federal Regulations, Section 156. When importing pesticides or devices to the U.S., the importer must submit to the appropriate EPA regional offices on EPA Form 3540-1 "Notice of Arrival (NOA) of Pesticides and Devices". Department of Homeland Security/Customs and Border Protection (CBP) regulations prohibit the importation of pesticides without a completed Notice of Arrival (NOA).

Illegal pesticide imports include a wide range of products, such as naphthalene mothballs and related products (moth tablets, clothes hangers and urinal cakes), chlorine pool disinfectants, insecticidal chalk, roach killers, mosquito coils and rat poisons. Illegal pesticide imports, which can present significant human health and environmental risks, have been linked to poisonings of children and pets resulting from use of these products.

EPA Regions will be the primary source of inspections and enforcement for this focus 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 other compliance monitoring inspections. States should be made aware of EPA's strong interest in import compliance and be encouraged to cooperate and collaborate with EPA when situations warrant.

- Regions should work with U.S. Customs and Border Protection (USCBP) to identify pesticides and/or pesticidal devices in violation of FIFRA and prohibit illegal imports from entering the U.S. channels of trade. Regions should conduct pesticide import inspections based on identified targets at border crossings and other ports of entry, conduct sweeps and take samples, when appropriate.

- Regions may also monitor import compliance through inspections at the designated destination point for the imported products. Such inspections would be conducted after the imported pesticides have cleared US Customs and have entered into the country.

- While reviewing Notices of Arrival (NOAs), Regions should also screen for potential discrepancies concerning country of origin sources for active ingredients used to produce registered pesticides. Where potential discrepancies are noted, follow-up PEIs may be warranted to further investigate the matter.

- Regions may also conduct educational campaigns in urban neighborhoods that are at high risk for using illegal imports to facilitate reporting of tips/complaints from the public about the sale/distribution of illegal pesticide imports.

- Regions are expected to take enforcement actions, as appropriate, to ensure optimum deterrence effect and compliance impact.

Focus Area C: Worker Protection

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 standard. 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.

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 compliance and use compliance inspections. Performance expectations for an active federal cooperative compliance/enforcement role with WPS include:

- Regions should work with their state partners to target federal and state PEI inspections (focusing on high toxicity pesticides subject to 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.

- 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 chemicals with high risk for exposure.

- Enforcement actions should be pursued under both State and Federal authorities, as appropriate.

- States 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 investigations should be considered for referral to EPA for federal enforcement, when appropriate.

- Headquarters will provide assistance, as needed, to States and Regions in support of enforcement actions.

Commitment FIFRA-FED1: Project regional (federal) FIFRA inspections, including those at federal facilities. Each Region should conduct a minimum of 4 FIFRA inspections. In the Comment Section, provide the number of federal facility inspections.

3. *Reset Our Relationships with States*

The Regions should work with States and Tribes to implement the expectations above, including:

- Convene routine and regular (quarterly)[17] 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 fact-to-face.

- Where States are not meeting performance expectations, Regions should take action to enforce to address serious violations. Regions should focus oversight resources to the most pressing performance problems in States and should work to demonstrably improve state performance through these actions. Regions need to take action when necessary to communicate what things need attention to achieve goals of the federal environmental laws and ensure a level playing field between States.

- Negotiate, oversee the implementation of and review state and tribal performance under the pesticide enforcement cooperative agreements following existing policy and guidance.

- Seek state and tribal cooperation on implementation of focus areas under this NPMG.

- When doing mid or end-of-year reviews, include review cases based on complaints by farm-workers; review complaints and violations of OECA priorities such as fumigants and high profile cases to evaluate whether the subsequent enforcement response was appropriate.

- When reviewing state or tribal producing-establishment inspection reports submitted to EPA, ensure that inspections evaluate compliance with FIFRA export requirements.

[17] These meetings may be held in person or through conference calls or other venues, as appropriate. The quarterly frequency is strongly suggested as a best practice for ensuring progress in meeting goals. Regions may rely upon existing communications with states when they meet the intent of this section.

- Provide States and Tribes targeting assistance, especially related to inspections of producing establishments.

- Consult with Tribes on the central role that enforcement and compliance plays in EPA's direct implementation program and oversight of approved tribal programs

4. *Improve Transparency*

Currently, OECA is exploring ways to modernize and update databases that contain information on pesticide inspections and enforcement action by state and tribal grantees (FTTS/NCDB) that will improve data quality, and provide more timely data entry and public access. Regions are expected to continue to assure the timely and accurate entry of state and tribal performance data and their own federal inspection and enforcement data.

Regions should:

- Continue to assure the timely and accurate entry of state and tribal performance data and federal inspection and enforcement data.

- Distinguish State information from Indian country information.

- Make information available to communities and Tribes, who may lack access to the internet.

5. *Relevant Policies and Guidances*

Additional information about OECA's FIFRA programs can be found at:
http://www.epa.gov/compliance/monitoring/programs/fifra/index.html
http://wwwp.epa.gov/compliance/monitoring/programs/fifra/wps.html
http://www.epa.gov/compliance/civil/fifra/index.html

Policies and guidance pertinent to OECA's FY 2011 priorities are the following:

- FY2011-2013 Grant Guidance will be posted at: http://www.epa.gov/compliance/state/grants/fifra.html (2008-2010 is up currently)
- 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

The majority of OECA Programs fall under Goal 5 of the Strategic Plan: Enforcing Environmental Laws. Planning for Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) enforcement and the RCRA Corrective Action program commitments were covered under Goal 3 of the Agency's Strategic Plan through FY2010, and will be moved to Goal 5 starting in FY 2011. The decision to integrate CERCAL enforcement and RCRA Correction Action into Goal 5 occurred too late to move the national program guidance for these activities from the Office of Solid Waste and Emergency Response (OSWER) NPM guidance into the OECA NPM guidance by the time of publication. Therefore, Regions must consider the OSWER NPM guidance for FY 2011 Region program direction for Superfund enforcement and RCRA Corrective Action.

1. Link with Top OSWER Priorities

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

- Land Revitalization: Through its Brownfields program, EPA will continue to provide for the assessment and cleanup of Brownfield sites, to leverage redevelopment opportunities, and to help preserve green space, offering combined benefits to local communities. OECA can facilitate reuse by clarifying liability at sites of federal interest (or for communities particularly impacted by the economic downturn), when perceived liability remains an obstacle and EPA involvement is critical. Brownfields are described in more detail in the Goal 3 NPM Guidance published by OSWER.

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

Enforcement assures that parties responsible for contamination step up to their cleanup responsibility. As part of the Integrated Cleanup Initiative, 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 RI/FS stages; expediting remedial action by holding parties accountable to negotiation timeframes and scheduled cleanup commitments; and rejuvenating the process for early identification of responsible parties to support increased site assessment, NPL listings, and early enforcement activities

EPA's Superfund enforcement GPRA goals and performance expectations for FY 2011 are:

COMMITMENT OSRE-01: Reach a settlement or take an enforcement action by the start of remedial action at 95% of non-federal Superfund sites that have viable, liable parties.

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.

OSWER's National Program Managers Guidance for FY2011 establishes priorities for EPA's Federal Facilities Response program: conducting cleanup and response work at contaminated sites and rendering formerly contaminated sites Ready for Reuse. EPA has Federal Facility Agreements in place at almost all Federal facility NPL sites regarding the cleanups conducted by the facilities and EPA's oversight of those cleanups. Those agreements lay out procedures for resolving disputes. Regions are expected to use the procedures of 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 should work together to get remaining NPL sites as well as new NPL sites under agreements or other legally-enforceable agreements.

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, Tribes and Local Communities

EPA will be implementing its Community Engagement Initiative, http://www.epa.gov/oswer/docs/cei_action_plan_12-09.pdf, designed to enhance headquarters and regional program engagement with States, 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 and Tribes, who lack access to the internet.

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

1. Criminal Enforcement Priorities

The criminal enforcement program will emphasize these priority areas:

- EPA Enforcement Goals
- National Enforcement Initiatives for FY 2011-13
- Regional Enforcement Priorities
- Repeat or chronic civil noncompliance
- Import/export cases

During FY 2011, the criminal enforcement program will also continue to implement its "tiering" approach to case selection and investigation. OCEFT collects data on a variety of case attributes to describe the range, complexity, and quality of our national docket. Data for selected attributes will be used to categorize cases into three tiers based on the severity of the crime associated with the alleged violation (Tier one being the most significant).

The data elements used in the tier methodology are directly linked to the upward departures identified under the Federal Criminal Sentencing Guidelines. These include information about the human health and environmental impacts (e.g., death or serious injury), the nature of the pollutant and the release, (e.g., toxic pollutant, continuing violation) and the characteristics of the subject(s) (e.g., national corporations, repeat violators). The tier designation will be used throughout the investigative process including case selection and direction of resources for case support.

2. Link with Top Program Office Priorities

The criminal enforcement program works closely and in an integrated fashion with OECA's civil enforcement program, and will work more closely with EPA's regulatory programs in order to align environmental crimes investigations with program priorities. The criminal enforcement program will support program priorities through enhanced criminal case screening, coordination and communication.

3. Reset Our Relationships with Law Enforcement Partners That Support State Environmental Crimes Investigations and Prosecutions

The criminal enforcement program will work cooperatively with the Regions and other law enforcement organizations as appropriate to:

- Ensure States have adequate capacity and authority to pursue environmental crimes.

- Regions and States are expected to take enforcement actions, assess penalties, as appropriate, and refer matters for criminal investigation to ensure optimum deterrence effect and compliance impact

- Emphasize and increase civil-criminal coordination and information sharing, including consistent and regular case screening conducted by regional civil enforcement and the criminal enforcement Special Agents-in-Charge (SACs), in which information is exchanged about potential violations to ensure they are addressed through the most appropriate enforcement tool – administrative, civil or criminal.

- Adhere to OECA's parallel proceedings policy when both civil and criminal violations are present in an individual case and ensure all civil and criminal staff are trained on parallel proceedings.

4. Improve Transparency

The criminal enforcement program will:

- Leverage criminal enforcement's field presence by publicizing the program with innovative press and outreach techniques. In addition to publicizing prosecutions through the media, criminal enforcement will continue several initiatives to enlist the public's help in identifying environmental violations and violators and to provide more information about criminal cases prosecuted, including enhancements to the Report a Violation and Fugitives web sites.

- Expand the public information about successfully prosecuted criminal cases posted on the OCEFT website, including the geographic location of those cases.

- Maintain the Summary of Criminal Prosecutions.

SECTION VII: 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: Federal Activities, 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.

A. Specific Federal Activities Program Performance Expectations

Federal activity enforcement work focuses on two areas: fostering pollution prevention through international cooperation and assisting federal agencies in making environmentally sound decisions which includes early public involvement. This work implements two of OECA's FY 2011 goals. Through the international work, OECA addresses pollution that can affect the health and welfare of people in the United States. Through its National Environmental Policy Act oversight, OECA promotes sound federal environmental decisions and maximizes mitigation through intense collaboration, ensures federal compliance of environmental statutes, and promotes public engagement to enhance transparency of federal proposals.

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

- Improve environmental performance and cooperation in accordance with Goal 6 of the U.S./Mexico Border 2012 plan (Regions VI and IX).

- Enhance 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., PCBs, mercury), and other regulated substances (Border Regions).

- Improve performance of joint responsibilities along the border and points of entry into the United States by working with the Bureau of Customs and Border Protection (CBP) (all Regions).

- Promote 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, it's Seaport Environmental Security Network (regional participation as appropriate, based on subject matter).

- Fulfill International agreements and the Agency's RCRA obligations regarding notification of trans-boundary movement of hazardous waste (all Regions).

- Review 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, recommend consent or objection to notifications within the time periods allowed under applicable international agreements (all Regions).

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

- Fulfilling the Agency obligations under NEPA, Section 309 of the Clean Air Act, and related laws, directives, and Executive Orders.

- Targeting high impact federal program areas (e.g., transportation, Appalachian mountaintop mining, and energy projects) to promote cooperation and innovation, and public involvement toward a more streamlined and transparent environmental review process.

- Promoting Environmental Justice considerations throughout the environmental decision-making process.

- Fostering cooperation and promote collaboration with other Federal agencies to ensure compliance with applicable environmental statutes; promote better integration of pollution prevention, ecological risk assessment and Environmental Justice considerations into their programs; encourage public involvement early in the process to maximize transparency; and provide technical assistance in developing projects that prevent adverse environmental impacts to improve the Nation's air quality and protect America's waters.

- Carrying out EPA's NEPA/CAA section 309 review responsibilities to review and comment on all major proposed federal actions to ensure identification, elimination, or mitigation of significant adverse effects, and make the comments available to the public.

- Carrying out EPA's responsibilities to comply with NEPA and address other cross-cutting issues@ (e.g., Endangered Species Act, National Historic Preservation Act, and Executive Orders on Environmental Justice, wetlands and flood plains).

- Making categorical exclusion determinations or prepare environmental analyses (EISs or EAs) for new source National Pollutant Discharge Elimination System (NPDES) permits, 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 prepare environmental analyses (EISs or EAs) for Special Appropriation grants (including the Colonias Wastewater Construction and Project Development Assistance programs) for wastewater, water supply, and solid waste collection facilities; Border Environment Infrastructure Fund

for the US/Mexico Border Environment Cooperation Commission projects; and reviews conducted under the "voluntary NEPA policy".

- Entering the results of their '309 EIS reviews and NEPA compliance actions into the Lotus Notes EIS Tracking Database maintained by HQ OFA, and the 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 Office of Federal Activity's GPRA reporting process, and provide other reports as may be required by the American Recovery and Reinvestment Act of 2009.

B. 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. EPA and the public rely on EPCRA for information on chemicals entering the environment, and on the storage of chemicals at facilities. EPA, States, Tribes, local entities, and communities rely on the combined EPCRA/CERCLA authorities to prepare local chemical emergency response plans, and to more safely and adequately respond to chemical emergencies. EPA must ensure that companies report accurately and within required time frames. Although there is no target for assistance activities, assistance is an appropriate tool, in particular, for smaller entities who meet the reporting criteria. 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.

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

Authorized States and Tribes, and Regions where States and Tribes are not authorized, are expected to:

A. EPCRA 313:

- Inspect or send enforcement information letters to enforcement targets developed by OECA and OEI for FY 2011 to address the following categories of concern:
    - Potential non-reporters (facilities that report in one year but fail to report the following year).
    - Potential data quality issues (facilities with significant changes in release estimates from one year to the next).
    - Facilities that submit a Form A after having previously submitted a Form R, and concerns exist as to the accuracy of this change.

- The submission of forms with errors significant enough to prevent the input of data into the Toxic Release Inventory.

- Track and prioritize tips and complaints and follow-up, as needed. OEI may provide additional targeting as part of an initiative focused on communities, chemicals or sectors of concern.

- Any inspections resulting from any of these targeting efforts will count towards the Region's overall inspection commitments.

In addition, Regions should:

- Review and follow-up on, as appropriate, disclosures submitted under the OECA Audit Policy and Small Business Policy.

- OECA will assist in targeting inspections, but the Region is 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.

- Conduct at least four on-site data quality inspections

- Conduct at least twenty on-site non-reporter inspections.

COMMITMENT EPCRA 01: Project the number of EPCRA 313 data quality inspections.

COMMITMENT EPCRA 02: Project the number of EPCRA 313 non-reporter inspections.

B. EPCRA 304/311/312 CERCLA 103

Regions should:

- Use screening and targeting tools to focus limited federal resources on national and regional priority areas.

- As described in the CAA Section 112r guidance, inspections at CAA 112r high-risk facility should include an evaluation of EPCRA sections 304, 311, and 31 and CERCLA section 103.

- Consider high-risk facility criteria specific to facilities that are not required to submit an RMP, such as 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.

- Investigate and respond (including taking enforcement action where appropriate) to any complaint containing allegations which provide a reasonable basis to believe that a violation has occurred, within a reasonable period of time.

3. Reset Our Relationships with States

The Regions should continue coordinating with States and Tribes.

4. Improve Transparency

The Regions should

- Enter all federal enforcement cases into national databases.
- Enter all federal civil judicial consent decrees into ICIS.

5. Relevant Policies and Guidances

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

C. Specific Multimedia Program Performance Expectations

Environmental harm often occurs across air, water and land. The multimedia compliance and enforcement program fosters a comprehensive approach to the resolution of environmental problems because many facilities and companies operate in violation of more than one environmental statute. "Comprehensive" means compliance with the applicable provisions of all environmental laws used to achieve broad-based environmental benefits. A multimedia strategy to target and address compliance problems and environmental harm results in more effective overall management of a facility's or a company's environmental liabilities and is generally more cost-effective than bringing separate media-specific enforcement actions. Multimedia-focused activities, including enforcement actions, reflect the goals of federal innovation and can lead to novel enforcement and compliance incentive approaches to address complex and emerging environmental problems.

OECA will work with Regions to develop a National Enforcement Initiative to assure compliance in the energy extraction sector.

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 oil and gas extraction and coal mining, pose a risk of pollution of air, surface waters and ground waters if not properly controlled. For example, an unprecedented acceleration of oil and gas leasing and development has led to a significant rise in the level of air pollution throughout the intermountain West. Drilling activities have led to concerns about ground water pollution and the safety of drinking water supplies in various parts

of the country. To address these emerging problems, EPA will develop an initiative to assure that energy extraction activities are complying with federal requirements to prevent pollution of our air, water and land. This initiative will be undertaken in particular areas of the country where energy extraction activities are concentrated, and the focus and nature of our enforcement activities will vary with the type of activity and pollution problem presented

D. Specific Indian Country Program Performance Expectations

EPA directly implements federal compliance monitoring and enforcement activity in Indian country unless and until a Tribe obtains program approval. Only seven of over 300 eligible federally-recognized Indian Tribes (Tribes) are approved to implement the enforcement parts of multiple environmental programs. EPA, therefore, maintains direct implementation responsibilities for most statutes in the majority of Indian country. In developing this Guidance, OECA is clarifying the commitments of the Regions who implement the programs where Tribes do not currently have program approval, and the oversight activities for Regions to review and oversee approved tribal programs. The responsibilities and commitments of the authorized Tribes are also specified in each of the media discussions in Sections II, III, and IV.

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

In FY 2011, EPA's enforcement and compliance work in Indian country is included in each program area within this NPM Guidance. Each area includes language and commitments that clearly distinguish between EPA direct implementation, EPA oversight, and approved tribal program implementation (e.g., language distinguishing who conducts the work within Indian country (EPA or Tribe with an approved program).

EPA's work under the three Indian Country initiatives – Schools, Drinking Water and Waste – over the past several years has led to increased understanding of environmental compliance and improved compliance. OECA expects the Regions to continue activities listed in the media sections of this Guidance to ensure the gains made in these priorities are reinforced with continued compliance, monitoring and enforcement activities.

2. Maintain Our Relationships with Tribes

Consultation between Tribes and EPA is essential to effectively address and prioritize the serious pollution problems facing Indian country. Consultation is particularly important as EPA emphasizes the central role that enforcement and compliance play in our direct implementation work in Indian country and oversight of approved tribal programs. Consultation is also crucial to facilitate complementary federal and tribal enforcement and compliance programs.

In FY 2011, EPA will continue to consult with Tribes on how to integrate existing and new enforcement policies with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments, the "EPA Policy for the Administration of Environmental Programs on Indian Reservations" and the "Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy." Integration will enable EPA to address, including through aggressive enforcement where needed, noncompliance at tribal and non-tribal facilities in a timely manner.

In that way, EPA and Tribes can ensure that people living in Indian country have clean air, water and land.

3. Improve Transparency

Regions and OECA should work with each EPA National Program Manager to provide tribes and tribal members with Indian-country specific information on compliance assistance, compliance monitoring, and enforcement activities in a user-friendly format. To ensure equal access to information, material should be available on-line (the Internet) and off-line (at schools, libraries, community centers, etc.). In addition, Regions should continue to verify facility-specific information and ensure that compliance and enforcement data and work in Indian country are placed in the appropriate national databases and delineated as "Indian country" or "tribal."

4. Relevant Policies and Guidances

Executive Order 13175 http://www.epa.gov/fedrgstr/eo/eo13175.htm

EPA Policy for the Administration of Environmental Programs on Indian Reservations" http://www.epa.gov/compliance/resources/policies/civil/rcra/epaindian-mem.pdf

Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy http://www.epa.gov/compliance/resources/policies/state/84indianpolicy.pdf

F. Specific 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. Given limited resources, the primary focus in this sector has been on monitoring and enforcement, given stewardship opportunities and reliable compliance assistance offered by others, including at *FedCenter*, the sector's on-line environmental stewardship and compliance assistance center sponsored by more than a dozen federal agencies. Further, while these federal installations are sometimes subject to special provisions of environmental law, EPA's general practice and policy is to hold them to the same standard of compliance as private facilities. EPA's federal facilities enforcement and compliance programs are at http://www.epa.gov/enforcement/federalfacilities/index.html

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 compliance with new Executive Order 13514 on federal sustainability.
See http://www.fedcenter.gov/

In an effort to effectively focus limited resources, FFEO and the Regional Federal Facilities Managers 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 recent years, FFEO and the Regions implemented *Integrated strategies* in several areas, including stormwater (started in FY 2006), federal underground storage tanks (FY 2007), federal prisons (FY 2009), RCRA non-TSDFs (FY 2009), and vulnerable populations (under consideration in FY 2010). In FY 2011, Regions are expected to continue to implement these Integrated Strategies.

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 and underground storage tanks. To support Regions in Assuring clean drinking water, especially on tribal lands, FFEO will research drinking water pollution and potential SDWA enforcement particularly at formerly used defense sites (FUDS). Regions and FFEO are expected to continue to implement an enforcement action against Bureau of Indian Affairs for violations at schools on BIA and tribal lands. In addition, FFEO will complete new inspection targeting capabilities for vulnerable communities.

Clean air: To reduce air pollution from largest sources and to support the Regions, FFEO will complete new research on power plants operating on military bases.

Climate and clean energy: 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 compliance with new Executive Order 13514 on federal sustainability. See http://www.fedcenter.gov/

In order to protect people from exposure to hazardous chemicals, Regions are expected to sustain a vigorous inspection and enforcement program at federal facilities. Regions and FFEO are expected to implement the *Integrated Strategy* on protecting vulnerable populations.

FFEO will continue research into non-compliance at surface impoundment sites, RCRA corrective action sites and other RCRA non-TSDF facilities. FFEO will complete new research on greater compliance/enforcement activity at formerly used defense sites (FUDS). In order to reduce risks from mineral processing, Regions are expected to address contamination and cleanup at federal abandoned mine sites. In an effort to reform chemical management enforcement, Regions are expected to address issues with PCBs in ships and asbestos and pesticides at military sites. FFEO will work to secure penalty authority against federal facilities through TSCA reauthorization. In addition, FFEO and Regions are expected to continue implementing the *Integrated Strategy* on federal prisons.

FFEO strongly encourages the Regions to take enforcement actions to improve compliance at federal facilities. For FY 2011, federal facility resources should give first priority to taking appropriate and timely enforcement actions, as defined within relevant media-specific policies, for each federal facility inspected as a consequence of Federal Facility Integrated Strategies efforts. Where appropriate, FFEO advocates including environmental management system (EMS) improvements and SEPs as part of enforcement action settlements. FFEO also urges the

Regions to take timely and appropriate enforcement actions to address violations of clean up responsibilities.

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 2011. The projections should not include Records of Decision at federal facility CERCLA sites. Projections can include issuance of Notices of Determinations regarding self-disclosures by federal facilities. 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.

Please note the reference at Section V (D) on page 63 of this Guidance to OSWER's NPMG which establishes priorities for EPA's Federal Facilities CERCLA Enforcement program. Clean up at hazardous sites: Regions and FFEO are expected to work to ensure timely completion of CERCLA Federal Facility Agreements (FFA). Regions are expected to oversee compliance by federal agencies under FFAs.

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 National Enforcement Initiative areas, as well as Regional priorities, national initiatives targeted at geographic areas, EJ areas and federal facilities Integrated Strategies areas. Under Sections II, III, and IV of this Guidance, each Region must report the number of federal facilities evaluations, investigations and inspections included within commitments under the various Regional media program commitments.

COMMITMENT FED-FAC05: Each Region must conduct ten (10) federal facilities inspections to support integrated strategy areas, which include stormwater; federal underground storage tanks, federal prisons; RCRA surface impoundments, RCRA corrective action sites, non-TSDFs and vulnerable populations. These inspections can be achieved through any combination of single media or multimedia inspections with the following limitations: (1) a maximum of three UST inspections can count toward this goal and (2) for any multimedia inspection conducted, it shall count as two inspections toward this goal. These inspections may simultaneously satisfy inspections commitments required in National Enforcement Initiative or other core program areas.

2. Reset Our Relationships with States

Regions are expected to hold States accountable for responsible federal facility compliance monitoring and enforcement activity.

3. Improve Transparency

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 pursue legislative changes to ensure federal agency environmental accountability under federal laws.

G. Specific Compliance Incentives Program Performance Expectations

In addition to providing compliance assistance and taking enforcement actions, EPA promotes compliance through the use of the following incentive policies: (1) the policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (the Audit Policy); (2) "Small Business Compliance Policy" (Small Business Policy); and (3) "Small Local Governments Compliance Assistance Policy" (Small Local Governments Policy).These policies reduce or waive penalties under certain conditions for facilities which voluntarily discover, promptly disclose, and correct environmental problems. EPA encourages the use of these policies, particularly when used as part of sector-specific compliance incentive programs that result in actions that reduce, treat, or eliminate pollution in the environment or improve facility environmental management practices (EMPs).

In most quarters, EPA receives slightly more self-disclosures than are recorded as resolved. Over time, this has led to an increasing inventory of unresolved disclosures. In recognition that we need to address this inventory, the Audit Policy Coordination Team (ACT), comprised of representatives from all ten Regions and Headquarters has developed a number of practice modifications, which should reduce transaction costs, streamline and speed up the processing of disclosures. In FY 2010, the Office of Civil Enforcement will be providing model documents to the Regions and Headquarters offices to expedite the processing and resolution of voluntary disclosures. In FY 2011, the Regions and Headquarters are expected to expeditiously process voluntary disclosures in order to prevent the increase of the pipeline, as well as to reduce the inventory.

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

EPA's Audit Policy, Small Business Policy and Small Local Governments Policy provide incentives for regulated entities to resolve environmental problems and come into compliance with federal laws through self-assessment, disclosure, and correction of violations. EPA promotes the use of the Audit Policy and focuses on corporate-wide auditing agreements to implement the Policy, assess and maintain compliance, consolidate transactions, and maximize penalty certainty. EPA is encouraging audits and disclosures that achieve significant environmental outcomes, as well as ways to improve Audit Policy implementation.

Under various Compliance Incentive Programs (CIPs), individual entities or members of a sector disclose and correct violations in exchange for reduced or waived penalties, while the risk of enforcement increases for those not taking advantage of this opportunity. Regions are expected to consider the use of CIPs directed at particular sectors and/or noncompliance problems, particularly key program priorities, with emphasis on violations that impact areas with

environmental justice concerns, and violations that, once corrected, are likely to result in measurable pollution reductions.

2. Reset Our Relationships with States

Regions are expected to promote EPA's compliance incentive policies (http://www.epa.gov/compliance/resources/policies/incentives), with the assistance of State, tribal, and local agencies, to encourage the regulated community to voluntarily discover, disclose, and correct violations before regulatory agencies identify entities for enforcement investigation or response. Additionally, Regions are expected to consider and follow-up on, as appropriate, self-disclosures submitted under the EPA Audit Policy, Small Business Policy, and Local Government Policy.

3. Improve Transparency

EPA will continue to enter data into ICIS regarding the receipt and resolution of self-disclosures and, at the end of FY2011, EPA will continue to report on the number of self-disclosures received and resolved together with the environmental outcomes resulting from disclosing entities correcting their violations.

EPA also promotes the disclosure of environmental information in accordance with the SEC's mandatory corporate disclosure requirements as a means of promoting improved environmental performance. Increasing public access to corporate environmental information maintains a level playing field for companies, and raises company awareness concerning environmental issues.

H. Specific Technical Support and Training Expectations

In 2011, Regions are asked to support the Enforcement Training Network in the following ways:

- With assistance from the National Enforcement Training Institute (NETI), develop the capability to train inspectors in Region and States. Assist in the development and delivery of the National Basic Inspector Training courses for regional inspectors as well as state inspectors where appropriate.

- Promote, advertise, and provide enforcement and compliance training to regional and state enforcement personnel through courses, webinars, on line training and other informational materials. Announce courses offered by the Region on NETI's website [http://www.epa.gov/compliance/training/neti/index.html], especially courses open to other Regions or state attendance

- Identify training needs for the legal, state and tribal training network

- Work with NETI staff to ensure the accuracy and quality of data reporting for the training activities below:
    - National Training Plan (NTP): This plan links training with strategic goals, national initiatives and key elements of the core programs. Regions and OECA offices are expected to enter their training courses into the NTP. Throughout the year, Regions and OECA offices should update the NTP database as additional

training is planned. When creating or revising training products, please consider integrating overarching policies, such as environmental justice and coordination between the civil and criminal programs. Also please consider the updated inspector training requirements in EPA Order 3500.1.

- Mid-Year and End-of-Year Statistics: Regions and OECA offices are expected to provide timely and accurate mid-year and end-of-year reports of compliance and enforcement training activities through the national data reporting process.
- Training Year Evaluation Forms: Regions and OECA offices are expected to use OECA's standard evaluation form for training events. By reporting and measuring outcomes of training, we will have information by which to evaluate the effectiveness of courses, and thereby motivate behavior changes and improve performance among trainers and trained personnel.

I. Specific State Review Framework (SRF) Expectations

In FY 2011, Regions are asked to support the SRF in the following ways:

- Conduct SRF reviews on state CAA, CWA, and RCRA enforcement programs, and ensure that commitments to implement significant recommendations for program improvements are captured in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the Region and the State, with accountability for carrying out those commitments. SRF review results should be viewed and discussed with the State in coordination with regional and state program reviews (such as water quality standards and permit reviews).

- Regions should 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, which include Preliminary Data Analyses, file reviews, recommendations, state comments, and benefits arising from Framework reviews, including Element 13, into the Lotus Notes SRF Tracker database upon completion of a SRF review.

- Monitor the progress of States and Tribes in carrying out the recommendations of rounds 1 and 2 of the SRF, and record the progress quarterly in the Lotus Notes SRF Tracker database.

- Use results of reviews to inform annual planning and regular progress meetings with States. Where progress resolving SRF recommendations is not being made, plans and commitments should be strengthened and realigned and include appropriate corrective actions.

COMMITMENT SRF01: The number of Round 2 State Review Framework reviews to be conducted, consistent with SRF guidance in FY2011, by State. Where appropriate, program

improvements should be captured in appropriate negotiated PPAs, PPGs, or categorical grant agreements between the Region and the State, with accountability for carrying out those commitments.

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

J. State Grant Results and Reporting

In FY 2011 EPA remains committed to strengthening our oversight and reporting of results from state grants, not only linking state grant work plan commitments to EPA's strategic plan, but also enhancing transparency and accountability. EPA and the States will continue working in FY 2011 to achieve this through two related efforts:

State Grant Workplans: The Agency's long-term goal is for EPA and the States to achieve greater consistency in workplan formats.

The formats will be available for use beginning with the FY 2011 grants cycle. OGD will develop performance metrics to ensure that 100% of workplans under the 14 categorical grant programs use one of the approved formats by no later than the FY 2013 grants cycle. If a particular State agency has difficulties under State law in adopting one of the established formats, OGD will work with the affected Region and NPM to resolve the issue.

State Grant Performance Measures (formally known as State Grant Template Measures): The current set of measures flagged as State Grant Template Measures in ACS will be retained for FY 2011 reporting. As in FY 2010, the use of the template to capture results for these measures is not required.

SECTION VIII. FY2010 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 ands 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.

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 2010 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.

Current schedules call for Regions to enter their draft targets into the annual commitment system by July 9, 2010. 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. All commitments should be final by October 22, 2010.

B. FTE Resource Charts

The Regions should complete FTE charts similar to the charts completed in previous planning cycles. Charts 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 significant due to increased interest from the Office of Management and Budget, the Inspector General, and Congress. Regions will receive FTE templates in August 2010. It is imperative that Regions complete these charts and submit these documents to Christopher Knopes and Lisa Raymer on September 30, 2010.

- 2010 Final – Enter the Region's final FTE allocation for FY2010 in the 2010 Final column.

- 2011 Proposed – Enter the Region's proposed FTE allocation for FY2011 in the 2011 Proposed column. Headquarters recognizes that FTE levels may change after the Agency receives the FY2011 enacted budget after October 1, 2010. Therefore this number is a "best guess" estimate.