

**FY 2002/2003 OECA  
Memorandum of  
Agreement (MOA)  
DRAFT Guidance**

May 2001 Draft Guidance

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## INTRODUCTION

### *PURPOSE OF GUIDANCE*

The Office of Enforcement and Compliance Assurance (OECA) Memorandum of Agreement (MOA) guidance sets forth the program priorities and activities for the Agency's national environmental enforcement and compliance program for Fiscal Years (FY) 2002/2003. This guidance is the basis for the development of individual MOAs between OECA and each regional office, identifying the overall program directions, work plans, specific activities and expected results. The MOAs provide a national operating plan to address program priorities and achieve Goal 9 of EPA's Strategic Plan, i.e., "to provide a credible deterrent to pollution and greater compliance with the law". (Attachment 1 lists the objectives and sub-objectives of Goal 9. Attachment 2 lists the Annual Performance Goals and Measures for Goal 9, and the State Accountability Measures.)

The final MOA submissions are due to Headquarters by September 1, 2001.<sup>1</sup>

### *CONSULTATION PROCESS*

This guidance reflects the continuing efforts by OECA and the Regional Offices to more effectively involve state and tribal regulatory partners and interested stakeholders in the establishment of national priorities and the direction of the national program.

The current involvement process began over a year ago with a solicitation through the Regional Offices to their respective state and tribal agencies requesting potential MOA priorities for the next two year planning cycle, 2002-2003. Similar suggestions were grouped together and background information on a consolidated list of the most suggested priorities was prepared. On September 28, 2000, an enforcement and compliance assurance candidate priority list was published in a Federal Register Notice (FR Notice) with an accompanying request for comments from the public at large. Comments on the FR Notice were compiled, and the results from both the Notice and other stakeholder involvement were discussed at a November 14, 2000 national priorities meeting hosted by OECA and attended by regional enforcement and compliance assurance managers, state and tribal regulatory officials and state associations. In addition, suggested draft priorities were provided for review to the Chair and Vice-Chair of the Compliance Committee of the Environmental Council of States (ECOS). This draft guidance incorporates the views expressed throughout the process.

## OECA NATIONAL PRIORITIES

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<sup>1</sup> Regions are reminded that Superfund enforcement and RCRA Corrective Action are covered under Goal 5. National program direction for Superfund activities are developed and conveyed through the SCAP process. RCRA Corrective Action is addressed through the RIP/BYP process.

### **What is a Priority?**

OECA's national program priorities are selected through a review of significant environmental risks or noncompliance patterns associated with industrial sectors, specific regulatory requirements, or geographic areas. The priorities are a set of key problems which have several common characteristics, including: national in scope; appropriate for federal attention and response; tailored strategies which include a variety of tools and approaches; and a commitment of resources dedicated to addressing the problem. Although regions will be expected to support national priorities, there are situations where a national priority will not affect or impact a region and there will exist substantial justification for a region's nonparticipation. It is also important to note that while Headquarters expects attention focused on the top national priorities, it also recognizes the need for and the importance of, the establishment of regional and state priorities, with the commitment to provide the resource flexibility necessary to implement those priorities.

### **Regulatory Partners**

States<sup>2</sup> play a crucial role in the implementation of the national environmental enforcement and compliance assurance program. Through joint planning between regions and states, governmental resources can be fully leveraged and duplication avoided. Regional priorities should be developed in partnership with their states by sharing information about compliance trends, negotiating work sharing agreements under existing frameworks, and undertaking joint activities. States are not required to adopt EPA's national priorities, however, this guidance provides flexibility for regions and states to mutually identify and implement their own priorities. It is anticipated that through joint planning between regions and states, national priorities and the core enforcement and compliance assurance program will be effectively addressed.

### **Priorities Identified in Previous Cycle Are Continued**

The proposed FY 2002/2003 priorities were first identified in the FY 2000/2001 OECA MOA, which we need to continue to address in the FY 2002/2003 cycle.

Based on stakeholder input, strong agreement was reached that each of these areas still require national and regional efforts. These priorities are identified below:

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<sup>2</sup> "States", unless designated otherwise, includes the following regulatory partners: states, tribes, and local agencies.

## FY 2002/2003 OECA NATIONAL PRIORITIES

- × Clean Water Act-- Wet Weather
- × Safe Drinking Water Act-- Microbial Rules
- × Clean Air Act--New Source Review/Prevention of Significant Deterioration (NSR/PSD)
- × Clean Air Act --Air Toxics
- × Resource Conservation and Recovery Act--Permit Evaders
- × Petroleum Refinery Sector

Please note that Metal Services will not be continued as a national OECA priority in FY 2002/2003.

### **Clean Water Priority Areas Directed Toward Human Health and Environmental Improvements**

#### *CWA--WET WEATHER*

**Priority Activity:** Implement programs to ensure compliance with all applicable regulations and with the: CSO Control Policy, SSO Enforcement Management System (EMS), Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows, National Concentrated Animal Feeding Operations (CAFOs) Sector Strategy (including the CAFO Implementation Plan), Unified National Strategy for Animal Feeding Operations, and the 2000 Storm Water Enforcement Strategy Update.

**Selection Rationale:** Run-off from wet weather events (i.e., overflows from combined sewers or sanitary sewers, CAFO discharges and run-off, and storm water run-off ) remains a leading cause of water quality impairment as documented in CWA Section 305(b) reports and represents a significant threat to public health and the environment. Sewer overflows contain raw sewage and have high concentrations of bacteria from fecal contamination, as well as disease-causing pathogens and viruses. Sewer overflows often occur in areas frequented by the public such as parks, backyards, city streets, and playgrounds. Runoff from CAFOs enters water bodies through excessive and improper application of manure to cropland. Poor maintenance of waste lagoons, improper storage of animal waste, and excessive rainfall resulting in spills and leaks of manure laden water is another major source of water pollution. The total number of storm water dischargers is estimated to be several hundred thousand. According to the "1998 National Water Quality Inventory Report to Congress," 35% of the water bodies assessed by the states are water quality impaired and one of the leading causes of impairment is storm water runoff. OECA has directed that compliance assistance and enforcement efforts be prioritized by looking at regulated facilities contributing to the impairment of watersheds, beaches and shellfish beds, source water protection areas, environmental justice areas, and other sensitive areas. National strategies for all

of the wet weather areas are now in place and are in various stages of implementation; new regulations are being developed for SSOs and CAFOs.

EPA compliance and enforcement efforts in the wet weather area are producing significant gains in the protection of human health and the environment. For example, under a 1998 settlement agreement, the City of New Orleans will renovate its antiquated sewage collection system to prevent future discharges of millions of gallons of raw sewage into the Mississippi River and thereby reducing the harmful effects of nutrient loading to the River and the Gulf of Mexico. The City will also implement a supplemental environmental project (SEP) to improve water quality along Lake Pontchartrain to protect public use of Lincoln Beach. In another 1998 settlement, the City of Atlanta will retrofit or construct new facilities to eliminate millions of gallons of raw sewage into the Chattahoochee River which will reduce the level of fecal coliform contamination in the River and in tributaries flowing through City neighborhoods where children play. Atlanta's corrective measures will also reduce nutrient loading in the West Point Reservoir, located downstream from Atlanta and a primary drinking water source for the City of LaGrange, GA. Atlanta will implement SEPs which require creation of a Greenway corridor and a stream clean-up project to improve the water quality of nearby waterways. Region IV has done outstanding work in the development of their Management, Operation, and Maintenance (MOM) Program which is a municipal self-assessment program for sanitary sewer collection systems. The MOM Program is designed to eliminate sanitary sewer overflows (SSOs) by ensuring proper management, operation and maintenance (O&M) of the infrastructure. In November 1998, EPA and the National Pork Producers Council entered into a compliance audit agreement whereby independent auditors will conduct compliance audits at pork producer facilities in exchange for reduced penalties for violations that are voluntarily and promptly disclosed and corrected. EPA Region X has been successful in targeting compliance and enforcement efforts at dairy facilities. In September 2000, EPA Region VII filed complaints against eight CAFOs in IA, KS, and NE for improper animal waste management and for damaging a wetland during construction of a hog feeding facility. To date, several of the regions are implementing watershed or sector (e.g., Region III and the Anacostia watershed and Region VI and the auto salvage sector) storm water initiatives and are piloting an expedited settlement process for storm water violations. Despite significant achievements in the wet weather area, substantial work remains to be done.

**Performance Expectations For the Wet Weather Priority Areas:**

**Combined Sewer Overflows**-- Regions should continue to implement their CSO response plan, submitted pursuant to the April 27, 2000 "Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows," to ensure that all CSO communities are under an enforceable mechanism to implement the nine minimum controls and a long term control plan.

**Sanitary Sewer Overflows**--There are approximately 20,000 separate sanitary sewer systems nationwide, all of which likely experience SSOs at one time or another. Regions should continue to implement their SSO response plan, submitted pursuant to the April 27, 2000 "Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows," to ensure that their SSO inventory is up-to-date and that a minimum of 20% of the priority systems (as

defined in Chapter X of the EMS) are addressed with appropriate follow-up action each fiscal year, and that the capacity management, operation and maintenance (CMOM) guidance and small community outreach and technical assistance are utilized where appropriate. As of April 2001, nine of the ten EPA regions have submitted their SSO response plans and are in various stages of implementation. These efforts have led to a significant increase in the number of enforcement actions initiated to address SSOs.

**Concentrated Animal Feeding Operations --** CAFOs were designated as an OECA MOA priority in FY1998; OECA issued the Compliance Assurance Implementation Plan for CAFOs in March 1998. EPA is at the mid-point of implementing that plan. There is a substantial need to continue effort in this area including working with states to get CAFOs currently required to have permits permitted under NPDES. In addition, regions should begin to focus efforts to ensure compliance with nutrient management requirements contained in CAFO NPDES permits. Regional CAFO MOA strategies should address the following: 1) work closely with states to implement and update the CAFO Sector Strategy, as needed (state strategies/plans should take into account existing state programs, state as well as federal priorities, and set forth criteria for risk-based targeting for inspections and enforcement); 2) ensure that **all** CAFOs are inspected by September 2003; 3) work with states to target inspections that emphasize nutrient management plans (including the land application of manure); 4) develop a training strategy to ensure staff is adequately trained to fully inspect and provide compliance assistance to CAFOs (including land application); 5) monitor CAFO compliance and respond to non-compliance trends; 6) continue targeting enforcement activities of non-complying CAFOs as appropriate; 7) ensure that all regional and state CAFO NPDES permit, compliance, and enforcement information is entered into the permit compliance system (PCS) or an equivalent system; 8) work with states, as appropriate, to develop compliance assistance materials for the new CAFO permit and effluent guideline regulations which will be issued by December 2002; and 9) continue efforts with states to identify the universe and report performance measures manually as necessary.

In FY 2002/2003, regions with CAFOs will be expected to continue to inspect or to conduct joint inspections with the states as outlined in the 1998 Compliance Assurance Implementation Plan for CAFOs. Regions should also coordinate their compliance assistance activities with EPA's Agriculture Compliance Assistance Center.

**Storm water--**Regions should continue to implement the "2000 Storm Water Enforcement Strategy Update" and complete the sweep(s) initiated to identify regulated industrial facilities or large construction sites that have failed to apply for storm water permit coverage or that are in violation of the requirements of their permit. Regions should prioritize storm water inspections, compliance assistance, and enforcement actions where there is water quality degradation and/or a threat to public health (e.g., storm water discharges contributing to impairment of a watershed, a drinking water source, issuance of a fish advisory, beach closure, or shellfish bed closure). Priority should be given to storm water problems associated with the other OECA MOA priorities (e.g., CAFOs). Watershed and sector storm water targeting initiatives and expedited settlement efforts should be expanded in other regions in FY2002/2003. OECA will provide support to ensure national consistency and to encourage the use of compliance incentive programs in this

area.

**Timeframes:** Wet weather actions will be taken throughout FY 2002/2003. In their MOA submissions, regions will be expected to include a brief description of how they are addressing the national wet weather priority, including specific activities planned, tools and any unique regional measures used, goals, outcomes, related milestones, and any anticipated tradeoffs. A region that proposes not to participate in a particular aspect of the national wet weather priority must provide a rationale in its MOA submission.

### **Safe Drinking Water Priority Focuses Compliance and Enforcement Efforts on Microbial Rules**

#### *MICROBIAL RULES*

**Priority Activity:** Ensure compliance with microbial drinking water regulations through enforcement and compliance assistance. ORE expects to review and discuss with the regions quarterly exceptions lists of those public water systems with unaddressed significant non-compliance for microbial rules to ensure that timely and appropriate actions are taken to remedy microbial non-compliance. Similar discussions between regions and states are advisable. In addition, region-specific compliance and enforcement strategies to address microbial non-compliance are recommended.

**Selection Rationale:** Contaminated drinking water is a direct threat to human health. The effects of contaminated drinking water can be severe, especially on children, the elderly, and persons with compromised immune systems. Adverse health effects of microbiological contamination include gastrointestinal distress, fever, pneumonia, dehydration (which can be life-threatening), or death. Serious effects were seen in the Milwaukee outbreak of cryptosporidiosis that was responsible for symptoms in over 400,000 persons, 4,000 hospitalizations, and over 100 deaths. In Austin, TX, contamination of drinking water wells infected over 1,300 persons. The Centers for Disease Control believes that there are significantly more cases of waterborne illnesses than reported, as mild cases are often mistaken as the flu.

Ensuring compliance with the microbial rules is the highest OECA drinking water compliance and enforcement priority. This priority is further justified by recent data. For example, the draft *1999 National Public Water Systems Compliance Report* prepared by the Office of Compliance notes that 61% of all drinking water violations in the nation in Calendar Year 1999 were violations of the Total Coliform Rule (TCR) or the Surface Water Treatment Rule (SWTR). This continues a trend, noted in the three prior reports, that microbial rules are the drinking water rules most often violated. The TCR, SWTR and the Interim Enhanced Surface Water Treatment Rule (IESWTR) drinking water regulations deal directly with microbial contamination and have been in effect for a number of years; there has been and continues to be substantial outreach and compliance assistance, as well as enforcement activity in these areas. In addition, the Ground Water Rule

(GWR), the Long-Term 1 Enhanced Surface Water Treatment Rule (LT1), the Filter Backwash Rule (FBR), and the Long-Term 2 Enhanced Surface Water Treatment Rule (LT2) were recently promulgated and have effective dates beginning in FY 2001 or are likely to be promulgated in FY 2001. These new regulations create the need for continued enforcement efforts to protect the public and obtain the pollution benefits envisioned. EPA would be directly implementing and enforcing these regulations in states until they adopt the new regulations and receive program approval.

In recent years, we have seen the effective use of emergency authorities to address microbial contamination problems. However, regions should generally address non-compliance by public water systems before unaddressed violations lead to emergency situations requiring use of such authorities. Due to the existing high levels of non-compliance and the direct public health effects of violations, the microbial drinking water regulations overall remain a high priority for OECA. The regulations also provide information on sources of contamination. OECA has a particular interest in enforcement and compliance assistance activities where source water for the drinking water area or wellhead are contaminated or threatened. This may lead to actions against entities who are or may be contributors to contamination of source water.

#### **Performance Expectations for SDWA Microbial Rules:**

Regions are expected to address through enforcement, targeted compliance monitoring or compliance assistance, all public water systems, including Federal facilities and tribally owned or operated systems, which become significant non-compliers for any of the microbial rules. Regions will use a rolling-base approach to identify systems as they become significant non-compliers rather than work from a fixed-base of significant non-compliers identified at the beginning of the fiscal year. Regions are expected to address systems in significant non-compliance with the microbial rules in a timely and appropriate fashion. As a numerical criteria, Regions are expected to address 100% of those public water systems in significant non-compliance with the microbial rules, before they become unaddressed significant non-compliers on the SDWA exceptions list.

Under the SWTR, in the past, the focus nationally was on ensuring that systems which were unfiltered and required to filter were on enforceable schedules to install filtration. This focus will now shift somewhat as the majority of these systems have installed filtration as required. Specifically, regarding SWTR, regions are expected to:

- (a) ensure compliance with those schedules through monitoring progress and by taking additional enforcement actions where there are violations of the schedules;
- (b) review the compliance status of filtered systems with the performance criteria in the rule; take actions against all systems which become significant non-compliers (SNCs) and against non-SNCs to the extent resources allow;
- (c) review the status of ground water systems which have been determined to be under the

influence of surface water. Take actions to ensure that those systems required to filter are on an enforceable compliance schedule and are in compliance with that schedule; and,

(d) review the compliance status of those systems which were never required to filter and are legitimately allowed to remain unfiltered by continuing to meet all of the applicable avoidance criteria. Take actions as appropriate, particularly in priority watersheds.

In FY 2002, for all public water systems, regions will continue to focus compliance assistance on provisions of the Interim Enhanced SWTR which will become effective in December 2001. This effort will include outreach and education programs to ensure that sources understand the requirements and assistance to help them develop the programs and system changes needed to implement the rule(s).

**Timeframes:** Actions will be taken throughout FY 2002/2003. In their MOA submissions, Regions will be expected to include a brief description of how they are addressing the national microbial rules priority, including specific activities planned, tools and any unique regional measures used, goals, outcomes, related milestones, and any anticipated tradeoffs. A region that proposes not to participate in a particular aspect of this national priority must provide a rationale.

### **Air Priority Geared Toward Attaining National Ambient Air Quality Standards (NAAQS) Improvements**

CAA-NSR  
and PSD

**Priority Activities:**

- 1) Identify plants or facilities to be evaluated for possible violations of NSR or PSD requirements, particularly focusing on the coal-fired utility, petroleum refining and pulp/paper industry.
- 2) Initiate an investigation on each plant or facility.
- 3) Develop a list of modifications or additions (either physical or operational) that the facility may have undergone without appropriate state or federal review.
- 4) Inspect plants and issue CAA 114 requests and/or conduct administrative depositions of key plant personnel to identify those activities that may be PSD or NSR modifications.
- 5) Initiate enforcement actions and/or provide compliance assistance/incentives, as appropriate.

**Selection Rationale:** New Source Review (NSR) requirements in the Clean Air Act are intended to ensure that the construction of new sources or modification of existing sources does not jeopardize the attainment of National Ambient Air Quality Standards (NAAQS) in non-attainment areas. Prevention of Significant Deterioration (PSD) requirements ensure that areas with relatively clean air are not significantly degraded by the influx of new air pollution sources. The PSD and NSR programs directly control

emissions of criteria air pollutants, and the PSD program requires sources to address a number of toxic air pollutants. Criteria air pollutants have been identified by EPA as having serious chronic and acute effects on public health. They also affect public welfare by damaging property and the natural environment. Both PSD and NSR requirements can add substantial costs to the construction or operation of new sources, thereby creating an incentive for sources to avoid permit review by state or federal authorities. In addition, some sources may have unintentionally violated these requirements due to misunderstandings of the applicable law. Avoidance of the required review results in inadequate control of emissions, thereby contributing thousands of unaccounted tons of pollution each year, particularly of NO<sub>x</sub>, VOC, SO<sub>2</sub> and PM<sub>10</sub>. These emissions worsen problems in non-attainment areas and threaten to drive attainment areas into non-attainment. A review of permitting history over the past few years indicates that states are issuing very few PSD or NSR approvals, despite the fact that trade association journals and economic indicators show that industrial facilities have significantly increased their production and modified their processes to a degree that should have triggered many PSD and NSR actions.

EPA's efforts in the PSD/NSR arena during the last year have produced large environmental gains. For example, in the coal-fired power plant initiative, the Tampa Electric Company agreed in February of 2000, to pay a \$3.5 million penalty, spend almost \$11 million in Supplemental Environmental Projects (SEPs), and, most importantly, spend nearly \$1 billion to install Best Available Control Technology (BACT) on all 10 of its coal-fired units. These controls will result in major reductions in the company's NO<sub>x</sub> and SO<sub>2</sub> emissions. In the Refinery Initiative, EPA's agreements with BP-Amoco and Koch Industries, arrived at in July of 2000, are resolving pervasive NSR/PSD, leak detection and flaring problems at all of these companies' refineries. The combined agreements are worth over \$600 million, and their implementation will result in a reduction of 60,000 tons of NO<sub>x</sub> & SO<sub>2</sub> annually. Finally, in the iron and steel sector, Nucor Corporation recently agreed to pilot several state-of-the-art air pollution control technologies that should result in the reduction of 6,400 tons of nitrogen oxide over 8 years. It also agreed to install control technologies on its steel fabrication facilities that should result in the reduction of 3,000 tons of VOCs over 8 years. The Consent Decree covers all 8 of the company's mini-mills and 6 steel fabrication facilities located in 7 states. The company agreed to pay a \$9 million civil penalty and provide \$4 million for SEPs. Finally, EPA's work has encouraged disclosures of PSD violations.

***Performance Expectations:*** PSD and NSR programs are the crucial provisions aimed at preserving air quality contained in the Clean Air Act. Accordingly, this strategy is a current priority, and is expected to continue throughout the 2002-2003 MOA cycle. The current emphasis on the coal-fired utility, petroleum refining, and pulp and paper industries is expected to continue yielding cases. In addition, other sectors, such as the mini-mill industry in iron and steel production, have shown considerable growth in recent years without a commensurate increase in permit activity, so may bear additional scrutiny. As the existing cases continue, some of these new categories can be preliminarily evaluated. Investigation of potential violators can proceed as warranted.

1) Each region should target sources to identify instances where there is "probable cause" to believe there are PSD/NSR violations. Regions should select an average of two plants or facilities in each state each year for in-depth investigation relating to likely violations of NSR/PSD requirements, particularly focusing on the coal-fired utility, petroleum refining and pulp/paper industries. 2) For each source identified by the region, initiate an investigation to ascertain if plant activities have (or should have)

triggered NSR or PSD. These investigations should include a review of comprehensive information on each plant or facility (e.g., state environmental files, filings with state utility commissions or permitting authorities, FERC and SEC filings, synthetic minor permits, etc.). 3) Each investigation should result in the development of a list of modifications or additions (either physical or operational) that the facility may have undergone without appropriate state or federal review. This list will help focus subsequent inspections, fact gathering and case development. 4) Regions should inspect plants and issue CAA 114 requests and/or conduct administrative depositions of key plant personnel to identify those activities that may be PSD or NSR additions or modifications. 5) Based on the results of the investigation, regions should initiate enforcement actions and/or provide compliance assistance/incentives, as appropriate. 6) Regions should encourage voluntary disclosures and follow EPA's September 30, 1999 reduced penalties policy that allows disclosures of violations discovered during the non-routine review of prior applicability determinations.

**Measures:** Success in this initiative will be measured in terms of the cases investigated that produce results. Positive results include notices of violation sent to the company, referrals to the Department of Justice, settlement discussions with companies. The number of tons of pollutants reduced as an outcome of these activities will be the main indicator of success.

### **Maximum Achievable Control Technology (MACT) Standard Adoption**

CAA--  
*AIR TOXICS*

**Priority Activity:** Regions will adopt MACT Standards to develop implementation tools and to become the national enforcement/compliance expert for the selected standards.

**Selection Rationale:** Air Toxics was selected as an OECA national enforcement and compliance assurance priority for FY 2000 and 2001 to address the unprecedented number of new regulations being promulgated under the Clean Air Act. The regions were asked to “adopt” 1 or 2 MACT standards per year to develop implementation tools and to become the national

enforcement/compliance expert for the selected standards. MACT standards are promulgated under the Clean Air Act to regulate hazardous air pollutants posing the highest degree of risk to human health and the environment.

The purpose of the “adopt a MACT” approach is to distribute the substantial implementation workload between Headquarters and the regions to ensure that regulatory requirements are clearly understood; guidance and compliance assistance tools (e.g. permitting and enforcement guidance, inspector checklists and applicability flow charts) are developed for both regulatory agencies and the regulated community; and targeted inspections and enforcement are carried out. By ensuring compliance with MACT standards, the Agency will reduce public exposure to toxic air emissions.

Between 1994 and 1999 approximately 60 new MACT standards were promulgated in response to the 1990 Amendments to the Clean Air Act. There are approximately 50 MACT standards under development and expected over the next two years. Consequently, the continuation of the “adopt a MACT” approach for the Air Toxics priority is necessary to address this unprecedented regulatory implementation workload.

During the FY 2000/2001 OECA MOA cycle, regions committed to “adopting” one MACT standard per year and developing implementation tools that generally included inspector checklists and applicability flowcharts. The implementation tools were made available to regional and state counterparts and where appropriate, the regulated community, through a variety of methods including posting the tools on Internet sites including EPA regional sites and the Unified Air Toxics Web site. In FY 2000, 10 environmentally significant MACT standards were adopted by the regional offices. For example, Region 1 adopted the Halogenated Solvent Degreasing MACT and developed the following tools: an inspection checklist; a screening guide for inspection targeting; a protocol for monitoring applicable work practices; an Internet based inspector training slide show and a compliance assistance wall poster for degreasing shops.

***Performance Expectations:*** For the FY 2002/2003 OECA MOA cycle, OECA plans to provide the regions with a list of MACT standards that are recommended for “adoption.” OECA will coordinate with the Office of Air and Radiation (OAR) to develop this list. OECA will provide a list of MACT standards that is broad enough to provide sufficient options for all regions. When selecting MACT standards for inclusion in the program, OECA, OAR and the regions will consider the compliance date, the number and geographic distribution of regulated facilities, the pollutant risk, the impact on priority areas, input from state and local agencies as well as other OECA and Agency priorities.

For an “adopted” MACT standard, regions will be asked to complete a more comprehensive package of implementation tools and information to share with other regions. This package may include, but is not limited to, such items as source identification plans, inspector checklists, applicability flowcharts, and enforcement document templates. It is also expected that regions will conduct inspections and take appropriate enforcement actions and share their inspection/enforcement experience with other regions. Regions will work with state, tribal, and local agencies to promote delegation of MACT standards, and ensure that state, tribal, and local agencies conduct compliance inspections and take appropriate enforcement actions for the MACT standards adopted. If state, tribal, and local agencies do not take appropriate enforcement action, the regions will assume the enforcement lead in accordance with the established policy on Timely and Appropriate Enforcement Response to High Priority Violations.

***Timeframes:*** Actions will be taken throughout FY 2002/2003. In their MOA submissions, regions will be expected to include a description of which MACT standards they are adopting, and the implementation tools they will develop. A list of MACT standards that are recommended for adoption will be provided in the final MOA Guidance. Regions are to assess their progress at meeting their adopted MACT commitments at the end of each fiscal year.

## Targeting Companies Which Handle Hazardous Waste Illegally

### *RCRA PERMIT EVADERS*

**Priority Activity:** Regions should focus their facility screening, compliance monitoring, and enforcement resources on those companies (including Federal facilities) that are evading the RCRA regulatory system. This will ensure that illegal treatment and recycling practices are eliminated and will ensure the equitable treatment of those facilities that have complied with RCRA. As a result, human health and the environment will be protected from exposures to hazardous contaminants released as a result of illegal practices. Industrial practices (and processes) of concern include:

- C Illegal hazardous waste recycling operations (e.g., “sham recycling”);
- C Illegal dilution of hazardous wastes and other practices (e.g., introducing reagents or foreign materials) that circumvent hazardous waste determination requirements (including Toxicity Characteristic Leaching Procedure test results);
- C Illegal treatment, storage, and disposal of wastes that are no longer exempt under the Bevill amendment;
- C Treatment (e.g., incineration) of hazardous wastes containing lead and other pollutants in illegal RCRA units (e.g., thermal reclamation units);
- C Misidentification of hazardous wastes (e.g., relying on outdated or non-representative test results); and
- C Companies/Entities that have sought to include themselves within the ambit of various exceptions or exemptions to the RCRA Subtitle C system but failed to meet the terms of those exceptions or exemptions.

**Selection Rationale:** There is concrete evidence of wide-spread noncompliance with RCRA requirements. For example, some mineral processing facilities have taken the position that RCRA does not apply to their waste streams. Many of these waste streams have been regulated under RCRA Subtitle C since 1989, and have become subject to the land disposal restrictions requirements (Phase IV (May 26, 1998)). Concerns (including historical violations) include but are not limited to: 1) commingling hazardous wastes with Bevill wastes and subsequently improperly disposing of the mixture; 2) failing to make proper hazardous waste determinations; and 3) operating hazardous waste treatment units without appropriate permits.

Allowing facilities to operate outside of RCRA presents an unreasonable risk to human health and the environment. For example, some manufacturers of waste derived fertilizer are receiving hazardous wastes to produce a product placed on the land. Some of these facilities have not managed such wastes in compliance with Subtitle C. In January 1997, Region VII issued a RCRA § 7003 order to one facility because their processing of incoming secondary hazardous materials to produce fertilizer resulted in a release of lead and cadmium to the environment, contamination of the facility, and nearby wetlands. It also resulted in employee airborne lead exposure levels that

were 16.6 times higher than the allowable level and lead to an Occupational Safety Health Administration citation for violations of its lead standard. Another facility is now a Superfund site because of a zinc oxide pile that was leaching into the groundwater. Illegal waste handling and management operations present significant environmental threats. Further, these operations continue to economically undercut those facilities that operate in compliance with environmental laws. Thus, a national focus is warranted for these operations.

We continue to find significant RCRA-related, noncompliance issues at foundries; however, due to recent court decisions, this remains a complex area and the regions should continue consulting with Headquarters.

**Performance Expectations for RCRA Permit Evaders:** Regions should work with OECA to implement the appropriate strategies to identify facilities (including Federal facilities) for compliance assurance and enforcement activities. Each strategy will address the following: identification of high risk facilities, areas, and/or communities of highest priority; compliance monitoring approach; state involvement; enforcement response options; settlement approaches; time frames; goals for improving the compliance rate for a given sector; and measures of success.

While compliance monitoring and formal enforcement actions serve as deterrents, it is also important to utilize other approaches and tools. For example, EPA regions and Headquarters should continue to identify compliance assistance/outreach and compliance incentive opportunities. Opportunities to achieve significant environmental benefits beyond regulatory compliance levels (e.g., voluntary reductions in emissions) should be pursued where appropriate. Thus, we encourage each region to include (as part of its settlement approach) supplemental environmental projects (where appropriate) that reduce emissions or discharges associated with “persistent, bio-accumulative and toxic” wastes (aka PBT wastes) and other priority chemicals being emitted or released. Where appropriate, issuance of RCRA § 7003 and other emergency orders to address upsets and episodic releases or emissions should be considered.

Additionally, regions (in consultation with EPA Headquarters) may elect to address similar environmental problems in other industries (e.g., metal services, SIC Code 3471 and 3479) as part of their RCRA permit evader focus. The goal is to ensure that RCRA-regulated facilities properly identify, manage, and dispose of their waste in accordance with all applicable RCRA environmental laws.

**Timeframes:** Appropriate activities will continue or be initiated throughout FY 2002/2003. Regions are to assess their progress at the end of each fiscal year.

**Petroleum Refinery Sector Continues as a National Compliance and Enforcement Priority for the Years 2002/2003: Exit Strategy Described**

*PETROLEUM  
REFINING  
(SIC 291)*

**Priority Activities:** EPA's petroleum refinery initiative has several components, two of which have and will involve direct regional participation: slotted guidepoles and targeted investigations.

Our major effort has been and continues to be on targeted investigations. Our investigative strategy has evolved to address four "marquee" air issues: 1) PSD/NSR; 2) LDAR; 3) benzene waste and 4) flaring/NSPS. EPA has reached corporate-wide settlement agreements with several major refining companies that address each of these issues at all of their refineries ("global settlement"), collectively representing over 35 percent of total domestic refining capacity. Additional companies are in various stages of settlement negotiations. Continuing activities will be: (1) conclude all company-wide settlement negotiations; (2) complete Agency investigations; and (3) develop state capacity to begin investigations of companies/refineries that choose not to enter into (or back out of) settlement negotiations, especially in states with a large number of refineries (e.g. Texas and Louisiana).

The fifth issue, leaks from external floating roofs on storage tanks, has been addressed through a compliance incentive program for slotted guidepoles, the devices used on tanks to guide the motion of the external roof and sample the contents. The slotted guidepoles strategy has largely been implemented via a CAP-type program: over 300 facilities are participating in this program, installing controls and reducing emissions by over 13,500 tons per year. Despite repeated outreach efforts, it is anticipated that many other facilities could have, but elected not to, participate in this program. They should be targeted for inspection and possible enforcement action (e.g., non-participating refineries, marketing terminals, bulk storage terminals and chemical plants). While a separate inspection of these facilities might not be justified to address slotted guidepoles, the compliance status should be evaluated whenever an inspection otherwise occurs. OECA has developed the tools for evaluating and prosecuting such inquiries and actions.

**Selection Rationale:** Petroleum Refining has been an OECA priority since 1996. Significant emission violations have been discovered through the investigations. In all, most facilities outside of California are strongly suspected to be in violation for at least one of the four marquee issues. In order to continue progress and ensure a level playing field across the entire sector, more time is needed to complete the work in the sector.

**Timeframes:** (*Exit Stage of the Strategy*) Since over 80% of the refining capacity universe has either entered into global settlements, is engaged in global settlement negotiations or is under active investigation, during FY 2002/2003 the Agency is proposing to continue and complete any remaining corporate-wide negotiations and all pending federal investigations. Headquarters and the regions will continue efforts to build state capacity for investigations to enable states to investigate smaller refineries and refining companies that were not reached by or under the national initiative. As needed, the Agency will follow up on previous actions and work with states.

### **Performance Expectations for the Petroleum Refining Sector**

Each region should:

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- Include an evaluation of slotted guidepole compliance at all facilities likely to have slotted guidepoles at petroleum liquid vessels subject to NSPS Subpart Ka/Kb that did not participate in the Storage Tank Emission Reduction Partnership Program;
- Complete all pending marquee issue investigations by the end of FY 2002;
- Initiate and complete marquee issue investigations at those refineries that are potentially high priority enforcement targets (HQ will aid the regions in identifying possible “targets”);
- Participate actively in company-wide settlement negotiations and national investigations of identified petroleum refining companies;
- Regions should consider innovative CAP-type programs and encourage voluntary disclosures through use of EPA's September 30, 1999 reduced penalties policy that allows disclosures of violations discovered during the non-routine review of prior applicability determinations; and
- Develop state capacity (as necessary) to investigate marquee issues and encourage these states to investigate these issues at petroleum refineries.

Measures:

1. Emission reductions that result from commitments in settlements or as a result of enforcement actions for CAA violations of NSR/PSD, LDAR, Benzene Waste-NESHAP and/or flaring/NSPS.
2. Number of facilities that commit to undertake each of the following compliance actions/injunctive relief as a result of enforcement:

- Permit applications received for NSR/PSD;
- Emissions reductions/controls installed for NSR/PSD, LDAR, Refinery Fuel Gas, Benzene Waste;
- EMS auditing for refineries;
- Industrial process changes;
- Storage/disposal changes.

3. Emission reductions that result from commitments made in self disclosures cases for CAA violations of NSR/PSD, LDAR, Benzene Waste-NESHAP and/or flaring/NSPS.
4. Number of marquee issue investigations initiated and concluded with respect to NSR/PSD, LDAR, Benzene Waste-NESHAP and/or flaring/NSPS.

***Metal Services – This Sector Will No Longer be a National Priority in FY 2002/2003***

***METAL SERVICES***

**Reclassification as a Regional, State or Local Priority:** The metal services industry is subject to a very broad spectrum of federal environmental statutory and regulatory requirements, including air,

water, and hazardous waste regulations. It is an important sector economically with a large number of facilities, potentially as high as 10,000, across the country. The majority of metal finishing job shops are small businesses. This sector also includes operations that are part of larger manufacturing facilities. The noncompliance problems typically found within the metal services industry generally arise from an inattention to various operating and maintenance requirements that prevent releases of pollutants. These noncompliance problems are often quite varied, depending on the size, sophistication, and technical and financial resources available to the facility. They rarely require the types of relief common to other national priority sectors, e.g. the capital-intensive technological remedies often required of the petroleum refining and coal-fired power plant sectors. OECA has concluded that the metal services industry is best addressed by regional, state and local programs that are likely to achieve better sector-wide compliance at reduced costs. These programs are well-equipped to determine the appropriate mix of compliance assistance programs and strategically targeted enforcement actions that will achieve the best results in their area.

**Priority Activities:** Prior to and continuing through FY 2000 and 2001, EPA has been conducting extensive compliance assistance activities for the metal services sector. These activities have included providing approximately one million in funding for the National Metal Finishing Resource Center (NMFRC) since 1995; publishing the Metal Finishing Guidance Manual - a plain language multimedia compliance tool for shop floor managers; publishing a plain language guide to the Chromium Electroplating MACT; developing a Halogenated Solvent expert system; developing a compliance video; and holding numerous workshops for individuals within the metal services sector. EPA has also undertaken a number of enforcement activities including several regional initiatives and a national Nitrate Initiative. Metal finishers, a subset within the broader metal services sector, were one of six industrial areas upon which EPA focused an audit/self-disclosure initiative to improve communities' right-to-know.

**Performance Expectations:** The metal services sector will no longer be a national enforcement and compliance assurance priority for FY 2002/2003. OECA will continue to support compliance assistance activities such as the NMFRC and to initiate national enforcement and/or compliance assurance activities when significant noncompliance issues are discovered. EPA regional offices are encouraged to coordinate with state and local agencies and develop and/or continue their own enforcement and compliance assistance strategies for the metal services industry. OECA will also consider placing particular problem areas of the sector within other existing MOA priorities such as the RCRA Permit Evaders or the Air Toxics priorities, both of which will be continued through FY 2002/2003.

**Timeframes:** Appropriate EPA and state/local enforcement and compliance assistance activities will continue (or be initiated) throughout FY 2002/2003. Regions which continue work in this sector are to assess their progress at the end of each fiscal year.

## **REGIONAL PRIORITIES**

In addition to submitting brief overviews of what they are doing to implement the national

priorities, the regions should also submit a brief narrative outlining each of their top regional priorities. (See Attachment 3 for specific MOA reporting format instructions.)

## **CORE PROGRAM**

### ***REVAMPED***

#### ***CORE***

EPA is committed to the concept that maintaining a viable core compliance and enforcement program is necessary to achieve a strong and credible enforcement presence to deter non-compliance. Recognizing the magnitude of maintaining both the core program and devoting a substantial amount of resources to national, regional and state priorities, OECA acknowledges that the regions may need to make adjustments within their core program. The collaborative efforts of a regional/Headquarters workgroup to revamp the core is reflected in Attachment 7. Based on current proposed budget allocations for FY 2002, it is anticipated that regions may need to make tradeoffs and resource cutbacks within the core, either within or across media programs.

### ***EXCEPTIONS- BASED***

#### ***REPORTING***

Regions need only report exceptions to the core program. In its discussion of the core program, the region should identify, by media or program area, any changes or tradeoffs to the core program across or within program areas, and provide an explanation. For more specific information on core activities and reporting see Attachment 3, MOA Reporting Format and Instructions.

## **INSPECTION PROJECTIONS**

As in the past, regions are asked to provide projections of program activity for regional and state inspections and for addressing drinking water significant noncompliance by region and by state. Attachment 4 contains the definition and format for FY 2002 inspection projections and drinking water SNC. Please use these forms to enter inspection projections for the following media: NPDES, Pretreatment, RCRA (includes UST), TSCA (includes Lead), EPCRA, and Clean Air Act, and provide drinking water SNC rolling-base commitments. Completion of a Multimedia inspection projection chart, as well as a Statistically Valid Noncompliance Rate chart, are also being requested for FY 2002/2003. Please note that we have provide OECA contact persons for each of these projection charts.

## RESOURCE INFORMATION

### *RESOURCE ACCOUNTING*

Attachment 5 presents the resource utilization charts which regions should complete as part of their FY 2002 MOA submission. The information requested is necessary to account for enforcement and compliance activities to support budget documents and meet GPRA requirements and to inform Congress and others as to resource allocations and results. Under GPRA, OECA no longer implements a budget at the media level, so these resource utilization charts provide an essential level of detail that OECA would not otherwise be able to obtain. OECA senior management is committed to using these numbers wherever possible to address budget and resource questions and during regional visits. For FY 2003, we expect to collect only exceptions-based resource information.

## SUPPORT REQUESTS

### *DELIVERING SUPPORT*

Attachment 6 provides the information NEIC is requesting by June 22, 2001, to start their review and commitment process for specific regional support. Regions should submit this information directly to NEIC and begin discussions to allow for final agreements from NEIC during the negotiation phase immediately following the September 1, 2001 due date for the FY 2002/2003 MOA. In addition, regions should include their requests for Headquarter's guidance and training support in their national and regional priority narrative, where appropriate. Requests for FTE and extramural funding should be requested through a separate process, similar to the process used during FY 2001. The National Enforcement Training Institute (NETI) Training Course Program will be attached to the final FY 2002/2003 OECA MOA Guidance Document provided in June, 2001.

## ATTACHMENTS:

- Attachment 1: EPA Goals 9 and 7 Objectives and Sub-Objectives
- Attachment 2: FY 2002 Annual Performance Goals and Measures and Accountability Measures
- Attachment 3: MOA Format and Instructions, Negotiation and Reporting Schedule
- Attachment 4: Inspection Projection Forms (including a multimedia inspection reporting form)
- Attachment 5: FTE Resource Charts
- Attachment 6: NEIC Support Call Request (NETI Training Course Program will be attached to the Final Guidance)
- Attachment 7: Revised OECA Core Guidance

\*Strategies for each of the national priorities (either existing or new draft proposals).

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\*1-Page Checklist for each national priority

\*These attachments will be provided as part of the final FY 2002/2003 OECA MOA guidance to be issued in June, 2001.