



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

SEP 10 2010

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

SUBJECT: Issuance of the Clean Air Act Stationary Source Compliance Monitoring Strategy

FROM: Lisa C. Lund  
Director  
Office of Compliance *Lisa C. Lund*

TO: Regional Compliance/Enforcement Division Directors

Attached is a copy of the revised Clean Air Act Stationary Source Compliance Monitoring Strategy (CAA CMS). This revised strategy replaces the 2001 CAA CMS. The revisions to the strategy are the result of in-depth discussions with representatives of the National Association of Clean Air Agencies (NACAA) and dialogue with regional State/local organizations and individual State/local agencies. In addition, we worked closely with the Office of Civil Enforcement, the Office of General Council, and the EPA Regions. The major changes to the CAA CMS from the 2001 strategy are as follows:

- (1) The policy is revised to clarify that the time frames in the policy are based on Federal fiscal year, not calendar year. This change ensures that State and local plans and commitments are developed consistent with the EPA planning process, but still allows flexibility in planning compliance evaluations.
- (2) The policy includes an overview of the OECA Clean Air Act National Initiatives to reflect the overall scope and breadth of the national compliance and enforcement program being implemented to meet all statutory and regulatory requirements.
- (3) The section on Evaluation/Oversight is revised to reflect the establishment and use of the State Review Framework as the tool for the Regions to conduct oversight of State/local compliance and enforcement programs which would include in-depth evaluations of State/local implementation of CMS.
- (4) The policy is revised to account for changes in reporting as established in the Air Facility System (AFS) Information Collection Request.

In addition to the above major changes, the strategy now provides an internet link to example compliance monitoring reports (CMRs). These example CMRs are being provided to State and local agencies to assist inspectors in efficiently writing such reports, as well as improving the quality and completeness of the reports. The CMRs are available at: [www.epa-otis.gov/srf/srf\\_compliance\\_monitoring\\_reports.html](http://www.epa-otis.gov/srf/srf_compliance_monitoring_reports.html). The revised CAA CMS also includes other minor clarifications and revisions based on feedback we have received since issuance of the 2001 strategy.

We appreciate the support each of your offices provided in revising the strategy.

If you or your staff have any questions concerning the strategy, please contact Mamie Miller at (202) 564-7011, or Rob Lischinsky at (202) 564-2628.

Attachment

cc: Regional Air Compliance/Enforcement Branch Chiefs (I-X)  
Phillip Brooks, Director, AED, OCE  
Peter Tsirigotis, Director, SPPD, OAQPS  
Richard Wayland, Director, AQAD, OAQPS  
Compliance and Enforcement Committee Co-Chairs, NACAA

**CLEAN AIR ACT**  
**STATIONARY SOURCE COMPLIANCE MONITORING STRATEGY**  
**September 2010**

## **DISCLAIMER**

The discussion in this document is intended solely as guidance. This document is not a regulation. It does not impose legally binding requirements on the United States Environmental Protection Agency (EPA), States, or the regulated community. This policy does not confer legal rights or impose legal obligations upon any member of the public. The general description provided here may not apply to a particular situation based on the circumstances. Interested parties are free to raise questions and objections about the substance of this policy and the appropriateness of the application of this policy to a particular situation. EPA retains the discretion to adopt approaches on a case-by-case basis that differ from those described in this policy where appropriate. This document may be revised periodically without public notice. EPA welcomes public input on this document at any time.

Any questions concerning this policy may be directed to either Mamie Miller or Robert Lischinsky at (202) 564-2300.

# CLEAN AIR ACT STATIONARY SOURCE COMPLIANCE MONITORING STRATEGY SEPTEMBER 2010

## I. INTRODUCTION

- The Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS) was last revised in April 2001. Prior to that revision, the policy had not been changed since 1991. A review by the United States Environmental Protection Agency (EPA) Office of the Inspector General ("Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs," EIG-AE7-03-0045-8100244, September 25, 1998) identified that the national policy was not consistently implemented across the country by the EPA Regions or State/local agencies. The Inspector General (IG) found that the policy had become dated as new Clean Air Act (CAA) programs were implemented, and the EPA planning process changed. The IG further recommended that EPA Headquarters provide formal oversight of the policy on a national level.
- In response to the IG report, the Office of Enforcement and Compliance Assurance (OECA) made a commitment to evaluate how the policy was being implemented and to revise it as necessary.
- Between October 1998 and May 1999, interviews were conducted with all of the EPA Regions and twenty-two States. The purpose of these interviews was to: collect baseline information on implementation of the policy; obtain feedback on its strengths and weaknesses; and identify any appropriate alternatives. The report, "*A Review of the Compliance Monitoring Strategy*" issued on July 26, 1999, summarized the findings of these interviews, and formed the basis for the 2001 revision of this guidance.
- The 2001 revision and this current 2010 revision are the result of in-depth discussions with representatives of the National Association of Clean Air Agencies (NACAA), and dialogue with regional State/local organizations and individual State/local agencies.
- The major differences between the 2001 CMS and the 1991 version were as follows:
  - (1) Emphasis was placed on Title V major sources and a limited subset of synthetic minor sources.
  - (2) Minimum frequencies for compliance evaluations to be conducted by State/local agencies were recommended for determining the compliance status of facilities covered by the policy. However, alternative evaluation frequencies could be negotiated with the Regions to enable States/locals to address important local compliance issues.

(3) The policy explicitly recognized that a variety of tools ranging from self-certifications to traditional stack tests were available and should be used to evaluate compliance. It further recognized that, in limited circumstances, on-site visits may not be necessary to evaluate the compliance status of a facility given the wide range of self-reported information such as annual Title V compliance certifications, deviation reports, and semi-annual monitoring reports. However, to ensure a compliance presence in the field, a minimum frequency for on-site visits was recommended.

(4) Three categories of compliance monitoring were identified to replace the levels of inspection defined in the 1987 Clean Air Act Compliance/Enforcement Guidance Manual. The new compliance monitoring categories were: Full Compliance Evaluations (FCEs); Partial Compliance Evaluations (PCEs); and Investigations.

(5) CMS plans were no longer required to be submitted every year, but could be submitted once every two years.

- The major changes in this CMS from the 2001 Strategy are as follows:

(1) The policy was revised to clarify that the time frames in the policy are based on Federal fiscal year, not calendar year. This change ensures that State/local plans and commitments are developed consistent with the EPA planning process, but still allows flexibility in planning compliance evaluations.

(2) An overview of the OECA Clean Air Act National Initiatives was added to reflect the overall scope and breadth of the national compliance and enforcement program being implemented to meet all statutory and regulatory requirements.

(3) The section on Evaluation/Oversight (Section XI) was revised to reflect the establishment and use of the State Review Framework (SRF) as the tool for the Regions to conduct oversight of State/local compliance and enforcement programs which would include in-depth evaluations of State/local implementation of CMS.

(4) The policy was revised to reflect changes in reporting as established in the Air Facility System (AFS) Information Collection Request.

## **II. GOALS OF THE COMPLIANCE MONITORING STRATEGY**

1. Provide national consistency in developing stationary source air compliance monitoring programs, while at the same time provide States/locals with flexibility to address local air pollution and compliance concerns.
2. Improve communication between States/locals and Regions on stationary source air compliance monitoring programs, and enhance EPA oversight of these programs.
3. Provide a framework for developing stationary source air compliance monitoring programs that focuses on achieving measurable environmental results.
4. Provide a mechanism for recognizing and utilizing the wide range of tools available for evaluating and determining compliance.

## **III. OVERALL PROCESS**

1. States/locals submit a CMS plan biennially (based upon the Federal fiscal year) for discussion with and approval by the Regions. Alternative CMS plans (as discussed in Section VII) are to be forwarded by the Regions to the OECA/Office of Compliance (OC) for review prior to regional approval. Regions also prepare a plan biennially for discussion with their States/locals to optimize resources, avoid duplication of effort, and provide opportunities for collaboration.
2. Each year, the Regions incorporate the plans into the EPA Annual Commitment System (ACS). Separate commitments should be made for States/locals and the Regions that are consistent with the National Program Managers (NPM) Guidance and any identified OECA CAA National Initiatives.
3. States/locals and Regions maintain records of their compliance monitoring activities, and enter facility-specific compliance data in the national air compliance database (AFS, or its successor).
4. Each year, States/locals and Regions review the results of the compliance monitoring activities and prepare an annual update to the biennial plan as necessary. Major redirections should be discussed as they arise.
5. Regions conduct in-depth evaluations of the overall State/local compliance monitoring program periodically utilizing SRF. Headquarters conducts evaluations of the Regional programs as part of routine oversight activities.

#### **IV. SCOPE OF POLICY**

- EPA recognizes that State/local agencies perform additional compliance monitoring activities beyond those addressed by this policy. This policy is not designed to preclude those activities, which may be statutorily driven by individual States/locals, but focuses on federally enforceable requirements for the following source categories: (1) Title V major sources; and (2) synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold (SM-80s).

For purposes of this policy, potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or legally and practicably enforceable by a State or local air pollution control agency.

The 80 percent threshold was selected to ensure that those facilities that either have the potential to emit or actually emit pollutants close to the major source threshold are evaluated periodically. This enables States/locals to focus resources on those facilities that are most environmentally significant. In determining whether a synthetic minor source falls within the scope of this policy, all facilities with the potential to emit at or above the 80 percent threshold are included regardless of whether their actual emissions are lower. If a State/local agency does not differentiate facilities based on potential to emit, all synthetic minors should be designated as SM-80s.

Please note that this policy does not address the following CAA programs:

- 40 CFR Part 63 National Emission Standard for Asbestos
- 40 CFR Part 63 Area Source
- 42 USCA Section 7412(r) Prevention of Accidental Releases
- 40 CFR Part 98 Mandatory Greenhouse Gas Reporting Rule
- 40 CFR Part 60 Standards of Performance for New Residential Wood Heaters
- 42 USCA Section 7651 Acid Deposition Control

#### **V. COMPLIANCE MONITORING CATEGORIES**

- States/locals and Regions are encouraged to use a variety of techniques to determine compliance, and utilize the full range of self-monitoring information stemming from the 1990 CAA Amendments.
- Consistent with this approach, there are three categories of compliance monitoring: Full Compliance Evaluations (FCEs), Partial Compliance Evaluations (PCEs), and Investigations. Each of these categories is defined below:



## 1. Full Compliance Evaluations

A Full Compliance Evaluation (FCE) is a comprehensive evaluation of the compliance status of a facility. For the purposes of this policy, "facility" is used in the broadest sense of the term incorporating all regulated emission units within the facility. An FCE addresses all regulated pollutants at all regulated emission units. Furthermore, an FCE addresses the current compliance status of each emission unit, as well as the continuing ability of the facility to maintain compliance at each emission unit.

An FCE includes the following:

- A review of all required reports, and to the extent necessary, the underlying records. This includes all monitored data reported to the regulatory agency (e.g., continuous emissions monitoring system (CEM) and continuous parameter monitoring reports, malfunction reports, excess emission reports). It also includes a review of Title V self-certifications, semi-annual monitoring and periodic monitoring reports, and any other reports required by permit.
- An assessment of control device and process operating conditions as appropriate. An on-site visit to make this assessment may not be necessary based upon factors such as the availability of continuous emission and periodic monitoring data, compliance certifications, and deviation reports. However, it is expected that the universe of facilities for which an FCE can be completed without an on-site visit is small. Examples of regulated facilities that may not require an on-site visit to assess compliance include, but are not limited to, a gas-fired compressor station, a boiler in a large office or apartment building, a peaking station, and a gas turbine. However, decisions on whether an on-site evaluation is not necessary should be made on a facility-specific basis.
- A visible emission observation as needed.
- A review of facility records and operating logs.
- An assessment of process parameters such as feed rates, raw material compositions, and process rates.
- An assessment of control equipment performance parameters (e.g., water flow rates, pressure drop, temperature, and electrostatic precipitator power levels).
- A stack test where there is no other means for determining compliance with the emission limits. In determining whether a stack test is necessary, States/locals should consider factors such as: size of emission unit; time

elapsed since last stack test; results of that test and margin of compliance; condition of control equipment; and availability and results of associated monitoring data.

- A stack test whenever a State/local deems it appropriate.

For additional guidance on conducting stack tests, please see the April 27, 2009 Clean Air Act National Stack Testing Guidance at: <http://www.epa.gov/compliance/resources/policies/monitoring/caa/stacktesting.pdf>

An FCE should be completed within the Federal fiscal year in which the commitment is made, except in the case of extremely large, complex facilities (hereafter referred to as mega-sites). Regulatory agencies may take up to three Federal fiscal years to complete an FCE at a mega-site, provided the agency is conducting frequent on-site visits or PCEs throughout the entire evaluation period.

In reviewing the required records and reports necessary to complete an FCE, regulatory agencies may use discretion in determining whether to review the documentation on hand, or wait until the most recent records/reports become available. For example, an agency may complete an FCE on October 15 by reviewing a facility's annual compliance certification that was submitted on September 1 of the prior fiscal year. The agency need not delay completion of the FCE by waiting until the annual certification for the present fiscal year is submitted the following September 1. In another example, a facility's annual certification is submitted on April 1 of each year. On March 1, an agency would be able to complete an FCE at the facility by reviewing the annual certification submitted the previous April 1. However, in this situation, the agency may prefer to wait one month to complete the FCE in order to review the most current certification rather than review a certification that is eleven months old.

An FCE may be done piecemeal through a series of PCEs. States/locals may wish to institute internal processes to review compliance monitoring files to ensure that FCEs have been completed at a given facility. If instituted, such processes should be designed in such a way that reviews are conducted throughout the year, rather than at the end of the year. This ensures that FCEs are reported in a timely manner to the national database, and the public has access to the most current information on compliance status.

## 2. Partial Compliance Evaluations

A Partial Compliance Evaluation (PCE) is a documented compliance evaluation focusing on a subset of regulated pollutants, regulatory requirements, or emission units at a given facility. Examples of specific activities include, but are not limited to, visible emission observations; on-site visit in response to a complaint

or tip; case development evaluation; consent decree follow-up; continuous monitoring system Quality Assurance (QA) Audit; review of Quarterly Excess Emission Reports or semi-annual deviation reports. Depending on the nature and scope of the PCE, the actions taken and observations should be included in a compliance monitoring report (CMR), or as a notation in the facility file.

A PCE may be conducted solely for the purpose of evaluating a specific aspect of a facility, or combined over the course of a Federal fiscal year (or up to three Federal fiscal years at mega-sites) to satisfy the requirements of an FCE. For example, a PCE could be used effectively to assess compliance with the HON MACT requirements if that is the primary area of concern at a chemical manufacturing facility. If at some point later in the year, the regulatory agency decided an FCE was necessary, the agency could combine the results of the MACT evaluation with subsequent evaluations focusing on the balance of CAA requirements.

### 3. Investigations

An Investigation can be distinguished from the other two categories in that, generally, it is limited to a portion of a facility, is more resource intensive, and involves a more in-depth assessment of a particular issue. It usually is based on information discovered during an FCE, or as the result of a targeted industry, regulatory, or statutory initiative. Also, an Investigation often requires the use and analysis of information not available in EPA data systems. It is best used when addressing issues that are difficult to evaluate during a routine FCE because of time constraints, the type of preliminary field work required, and/or the level of technical expertise needed to determine compliance.

Examples of this category of compliance monitoring are the in-depth PSD/NSR and NSPS reviews conducted by EPA of the pulp, utility, and petroleum refining industries. These investigations were initiated following analyses of publicly available information on growth within the industries, and a comparison of this information to data maintained by the regulatory agencies on the number of PSD/NSR permits issued during the same time frame. The analyses indicated that many facilities failed to obtain the necessary permits. As a result, the facilities had not controlled pollutant emissions as required, and thus realized significant economic benefits.

For a more complete definition of an Investigation, see "MOA Guidance (Air Program) Clarification and National Performance Measures Strategy (NPMS) Pilot" from Eric Schaeffer and Elaine Stanley to MOA Coordinators, Enforcement Coordinators, and RS&T Coordinators (October 26, 1998). See also, "Implementing the National Performance Measures Strategy – Second Phase (Attachment J)" from Steven A. Herman to Regional Administrators, Deputy

Regional Administrators, and Regional Enforcement Division Directors and Coordinators (December 23, 1999)

(<http://www.epa.gov/compliance/resources/reports/planning/results/npmmemo2.pdf>).

See also, the EPA HPV Policy (December 22, 1998) (“Investigation includes, but is not limited to, a series of inspections, review of CAA Section 114 responses, record reviews, or review of quarterly reports that were discovered within 30 days of each other and that pertain to the same source.”)

(<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/issue-ta-rpt.pdf>).

## VI. CLEAN AIR ACT COMPLIANCE AND ENFORCEMENT PROGRAM

### CORE PROGRAM

- The EPA stationary source compliance and enforcement program addresses air pollution problems for the following CAA programs:
  - New Source Performance Standards (NSPS)
  - National Emission Standards for Hazardous Air Pollutants (NESHAP)
  - Maximum Available Control Technology (MACT)
  - Area Source
  - New Source Review/Prevention of Significant Deterioration (NSR/PSD)
  - State Implementation Plans (SIPs) and CAA Section 111(d) approved plans
  - Title V Operating Permit
  - Stratospheric Ozone Protection
  - 42 USCA Section 7412(r) Prevention of Accidental Releases
  - 40 CFR Part 98 Mandatory Greenhouse Gas Reporting Rule
  -

As stated above in Section II, this policy does not address the following CAA programs:

- 40 CFR Part 63 National Emission Standard for Asbestos
- 40 CFR Part 63 Area Source
- 42 USCA Section 7412(r) Prevention of Accidental Releases
- 40 CFR Part 98 Mandatory Greenhouse Gas Reporting Rule
- 40 CFR Part 60 Standards of Performance for New Residential Wood Heaters
- 42 USCA Section 7651 Acid Deposition Control

### EVALUATION FREQUENCIES:

- As stated above (Section IV), State and local agencies may perform additional compliance monitoring activities beyond those addressed by this policy. However, this policy focuses on federally enforceable requirements for Title V major sources and SM-80s. These sources may be subject to many, if not all, of the individual CAA programs.

- Minimum frequencies are recommended as guidance for State/local agencies when developing stationary source air compliance monitoring programs:

(1) An FCE should be conducted, at a minimum, once every two Federal fiscal years at all Title V major sources except those classified as mega-sites. For mega-sites, an FCE should be conducted, at a minimum, once every three Federal fiscal years.

Each Region, in consultation with affected States/locals, has the flexibility to define and identify mega-sites as it deems appropriate within the Region. However, this universe of facilities is expected to be small. When identifying mega-sites, the Regions should consider the following factors: the number and types of emission units; the volume and character of pollutants emitted; the number and types of control and monitoring systems; the number of applicable regulatory requirements; the availability of monitoring data; the degree of difficulty in determining compliance at individual units and at the entire facility; and the footprint of the facility. Examples of industries that may have qualifying facilities are petroleum refining, integrated steel manufacturing, chemical manufacturing, and pharmaceutical production.

(2) An FCE should be conducted, at a minimum, once every five Federal fiscal years at SM-80s.

(3) In those limited circumstances where it has been determined on a case-by-case basis that an on-site visit is not necessary to complete an FCE, an on-site visit should still be conducted, at a minimum, once every five Federal fiscal years at all Title V major sources to ensure a compliance presence in the field, verify record reviews, observe modifications or new construction, and identify any major permit deviations.

- In those years when an FCE is not conducted, States/locals should continue to review annual compliance certifications, and the underlying reports supporting those certifications (e.g., semi-annual and periodic monitoring reports, continuous emission and continuous parametric monitoring reports, and malfunction and excess emission reports).
- While the recommended minimum evaluation frequencies serve as guidance for the State/local agencies, the EPA Regions will continue to maintain expertise and a minimum level of activity consistent with the resources available for implementing the CAA program and Agency policies; monitor the level and quality of effort by the State/local agencies; and participate in national and region-specific initiatives that may require greater EPA involvement. The Regions will continue to focus on those activities that are directed to widespread noncompliance, will yield the greatest environmental benefit due to the potential for significant emission reductions, and are not duplicative of efforts by State/local agencies.

## CLEAN AIR ACT NATIONAL INITIATIVES

### Background on Priority-Setting Process

- EPA and the State/local agencies have several tools available to address environmental problems such as compliance monitoring, enforcement, compliance assistance, and compliance incentives. To solve environmental problems using these tools in the most efficient and effective manner, EPA has developed an integrated strategic approach that includes a focus on national enforcement initiatives.
- The core program includes the fundamental activities to meet the stationary source CAA requirements and thus protect the environment. In addition to the core program, OECA established a planning and priority-setting process for selecting and addressing national initiatives that require federal attention.
- In collaboration with our State/local partners, EPA defines and selects national initiatives through the use of several screening factors and criteria. Using such information, EPA determines if significant environmental benefits can be gained, or if risks to human health or the environment can be reduced through focused EPA action. EPA also looks to uncover identifiable and important patterns of noncompliance. Furthermore, the Agency analyzes whether the environmental and human health risks or the patterns of noncompliance are sufficient in scope and scale such that EPA is best suited to take action, and whether it is appropriate for EPA to take lead responsibility.
- Using the above information to define the scope and nature of environmental problems that warrant heightened resource and commitment levels on a Federal level for a designated period of time, the air program currently has two national air program initiatives: (1) Air Toxics; (2) New Source Review/Prevention of Significant Deterioration (NSR/PSD). In addition, there is third national initiative with a significant air component, the Land Based Gas Extraction and Production National Enforcement Initiative. The Agency has determined that Federal attention focused on these programs results in greater deterrence and a higher level of compliance by the regulated community.
- In the FY 2008-2010 planning cycle, the Air Toxics National Initiative Strategy focused on the problem areas of leak detection and repair (LDAR), industrial flares, surface coating, and air toxics in schools. (The air toxics in schools initiative was added as a problem area for FY 2010.) For the NSR/PSD National Initiative Strategy, the Agency selected four industrial sectors: coal-fired electric utilities; cement manufacturing facilities; sulfuric and nitric acid manufacturing facilities; and glass manufacturing facilities. The areas of focus may change over time as identified problems are addressed.
- In the FY 2010-2013 planning cycle, the Air Toxics National Initiative Strategy will continue to focus on LDAR and industrial flares, and be expanded to address excess emissions. The NSR/PSD National Initiative Strategy will continue to focus on coal-fired

electric utilities; cement manufacturing facilities; sulfuric and nitric acid manufacturing facilities; and glass manufacturing facilities. The Land Based Gas Initiative Strategy will focus on air emissions associated with gas extraction and production including well sites, compressor stations, and gas plants. The well sites include gas extraction associated with drilling at traditional oil and gas, coal bed methane, or shale gas sites.

#### EVALUATION FREQUENCIES:

- For the problem areas identified in the Air Toxics, NSR/PSD, and Land Based Gas Extraction and Production National Initiatives cited above, EPA will provide an enhanced Federal presence to address the widespread non-compliance in the identified problem areas.
- Pursuant to the CMS, no minimum evaluation frequencies have been established for State/local agencies with respect to compliance evaluations associated with the national initiatives. However, the Agency does encourage State/local participation in EPA compliance and enforcement activities within the national initiatives. State/local participation in such activities may be considered as a factor when evaluating a proposed alternative CMS Plan submitted by an agency. (See Section VII. Alternatives To The Recommended Evaluation Frequencies.)
- In addition to assisting with the EPA compliance and enforcement activities within the national initiatives, State/local agencies may choose to conduct air toxics and NSR/PSD compliance evaluations outside the problem areas and industrial sectors that are included within the national initiatives. Conducting these additional evaluations also should be taken into consideration when evaluating a proposed alternative CMS Plan submitted by an agency due to the resource intensive nature of the effort.
- In carrying out the national initiatives, EPA will continue to share with the State/local agencies the compliance monitoring and enforcement experience gained, the results achieved, and the lessons learned.

#### TRANSITION FROM NATIONAL INITIATIVES TO THE CORE PROGRAM

- Ultimately, the Agency identifies the appropriate point to exit the identified initiative and transition to the core program at a maintenance level. Maintenance refers to a shift in the strategy of the Agency from a resource-intensive priority to a level commensurate with the mission of the Agency, and long-term goals and objectives.
- However, when the strategic approach for a national initiative ends, the basic elements of such an approach still need to be addressed in the core maintenance program. Since the need for environmental protection remains once the initiatives revert back to the core program, the Regions are to work with their State/local agencies to establish goals; determine which tools (e.g., evaluations, enforcement, incentives, assistance) used in the initiative should be maintained for the core program to maximize the environmental

benefits; set the level of resources and compliance monitoring that should be continued once the transition occurs; and clearly communicate the roles and responsibilities for both the Regions and State/local agencies.

- Once the transition is complete, EPA will shift Federal attention to program management and oversight efforts to ensure that the State/local agencies continue an appropriate level of compliance and enforcement. For example, the former petroleum refining national program initiative was returned to the CAA core program once the performance-based strategic goal of the initiative had been met. Additional activity within the petroleum refining sector is being carried out as part of the core air program.

## **VII. ALTERNATIVES TO THE RECOMMENDED EVALUATION FREQUENCIES**

- States/locals may develop with Regional approval alternatives to the recommended evaluation frequencies. Alternatives may be developed on a facility-by-facility basis or for an entire source category. However, in determining whether an alternative frequency is appropriate, the following factors should be considered:

### Sources

- Compliance history,
- Location of facility,
- Potential environmental impact,
- Operational practices (e.g., whether operation is steady state or seasonal),
- Use of control equipment.

### State/Local Programs

- Identified deficiencies in the overall State/local compliance monitoring program (e.g., temporary resource constraints such as budget shortfall or position vacancy). The agency should be able to discuss what steps are being taken to address and resolve such deficiencies.
- Identified local air pollution and compliance concerns/priorities for which resources are needed to be directed (e.g., air toxics PCEs at secondary aluminum facilities). The agency should be able to provide a time frame for when such concerns/priorities will be addressed.
- Assistance provided to other State/local agencies (e.g., leading multistate/local initiatives; lending expertise; training new inspectors).

### EPA National Initiatives

- State/local participation in such activities.



- Prior to granting regional approval to alternatives, the Regions should submit alternative CMS plans to Headquarters (Office of Compliance) for review. This enables Headquarters to track alternatives and maintain national consistency as appropriate.

## **VIII. ELEMENTS OF THE CMS PLAN**

- State/local CMS plans are a building block in the NPM Guidance process, and should be finalized so they can be summarized and incorporated into the Regional ACS commitments. Therefore, they should be completed prior to the beginning of the Federal fiscal year.
- A separate CMS plan is not necessary if Regions and States/locals wish to continue using other formally negotiated documents (e.g., Enforcement Agreements, Performance Partnership Agreements, and Categorical Grant Agreements), provided these documents contain the same level of detail discussed below. If this approach is selected, the document should provide confirmation of adherence with the CMS policy and serve as a suitable substitute for a separate CMS plan.
- The content of CMS plans will vary depending upon whether States/locals develop and negotiate alternatives to the recommended evaluation frequencies.
- In those instances where States/locals meet the recommended evaluation frequencies and do not develop and negotiate alternative approaches, the plan should include the following elements:
  - (1) A facility-specific list (including the AFS identification numbers) of all Title V major sources. The list should identify by Federal fiscal year those facilities for which an FCE will be conducted. It should also identify those for which an on-site visit will be conducted.
  - (2) A facility-specific list (including the AFS identification numbers) of all synthetic minor sources and a list of those facilities covered by the policy. It also should identify by Federal fiscal year those facilities for which an FCE will be conducted.
  - (3) A description of how a State/local will address any identified program deficiencies in its compliance monitoring program. These deficiencies can stem from evaluations conducted internally, or by outside organizations such as EPA pursuant to the SRF process.
- In those instances where the States/locals propose alternatives to the recommended evaluation frequencies, States/locals should provide a more detailed plan. In addition to the above elements, States/locals should include a rationale describing: (1) why it is not

necessary to evaluate specific facilities or source categories subject to the recommended evaluation frequencies; and (2) why it is appropriate to substitute other facilities.

- If at the end of the first year, States/locals anticipate or know that they will be unable to meet their two year commitments by the end of the second year, they should notify the Region and revise their CMS plan accordingly.

## **IX. COMPLIANCE MONITORING REPORTS**

- States/locals may continue to format CMRs as they deem appropriate; however, the following basic elements should be addressed in the reports.

- (1) General information: date, compliance monitoring category (i.e., FCE, PCE, or Investigation), and official submitting the report.
- (2) Facility information: facility name, location, mailing address, facility contact and phone number, Title V designation and mega-site designation.
- (3) Applicable requirements: all applicable requirements including regulatory requirements and permit conditions.
- (4) Inventory and description of regulated emission units and processes.
- (5) Information on previous enforcement actions.
- (6) Compliance monitoring activities: processes and emission units evaluated; on-site observations; whether compliance assistance was provided and if so, nature of assistance; any action taken by facility to come back into compliance during on-site visit.
- (7) Observations and recommendations relayed to the facility during the compliance evaluation. Please note, this does not apply to information traditionally reserved for enforcement case files.

In providing the above information, States/locals should reference or attach other relevant documents as appropriate to avoid duplication. For example, the relevant section of a Title V permit could be attached to the compliance monitoring report rather than rewriting all of the applicable requirements.

- Compliance monitoring reports should be maintained and made available to the Regions upon request. Regions shall maintain similar files of regional activities and provide Headquarters with access upon request.

- Example CMRs documenting FCEs are posted for review by State/local agencies on the EPA Online Tracking Information System at:

[http://www.epa-otis.gov/srf/srf\\_compliance\\_monitoring\\_reports.html](http://www.epa-otis.gov/srf/srf_compliance_monitoring_reports.html)).

These example reports are provided to: (1) assist inspectors in efficiently writing complete CMRs; thereby, reducing time spent writing reports and maximizing time available for field presence; and (2) improve the quality and completeness of CMRs so they can serve as valuable tools for documenting non-compliance, as well as foundations upon which to proceed with successful enforcement actions.

## X. REPORTING

- Changes have been made in the national air compliance database (AFS) to facilitate the reporting of information consistent with the revised structure of this policy and the AFS ICR.
- To collect compliance information in a format that allows EPA to evaluate and compare compliance monitoring programs, Regions and States/locals will need to:
  - Continue to maintain records of compliance monitoring activities, and report the activities and the results in AFS, or its successor, on a routine basis. In accordance with the ICR, all activities are to be reported within 60 days.
    - The 60-day reporting provision also applies to any changes within the CMS source universe. Such changes are to be reflected within AFS no later than 60 days of the State/local agency becoming aware of the change. Any applicable source that begins operations is to be reported into AFS and given a CMS indicator and appropriate frequency. Those facilities that have been permanently shut down are to have the CMS indicator and frequency codes removed.
  - If a State/local agency negotiates an alternative plan which allows the agency to shift resources from Title V majors and/or SM-80s to other sources not addressed by the policy (e.g., minors), all relevant MDRs must be reported to AFS for all sources in the alternative plan.
  - Continue to designate the High Priority Violator (HPV) status of violating facilities in accordance with the EPA HPV Policy dated December 22, 1998.
  - Consistent with the HPV Policy, continue to report sources with a compliance status of “in compliance” only if all Federal and State administrative and judicial action against the source is complete (all consent decree/compliance order terms have been satisfied and all penalties have been paid), and the source has been confirmed to be complying with all applicable regulations of the CAA.
  - Utilize the following compliance monitoring categories to report activities at the facility level in AFS, or its successor:
    - Full Compliance Evaluations
    - Partial Compliance Evaluations
    - Investigations

- Off-site FCEs are to be reported into AFS only when State/local agencies are able to complete an FCE without having to conduct an on-site visit to assess control devices and process operating conditions. Completion of an FCE without conducting an on-site visit is limited to a small universe of facilities and source categories.
- Although PCEs are to be reported by the Regions, they generally are not an MDR for States/locals. They become an MDR for States/locals when the PCEs are part of an alternative plan and/or when the PCEs lead to discovery of HPV.
- To assist in PCE reporting, specific PCE activities may be reported into AFS as complaint PCEs, permit PCEs, process PCEs, PCE on-site observations, or PCE off-site observations.
- Report the following information for all Title V annual compliance certification reviews in AFS, or its successor:
  - date due
  - date received
  - whether deviations were reported by the facility
  - date reviewed
  - compliance status
- Please note: Regions shall enter the first three data elements for each Title V compliance certification unless otherwise negotiated with States/locals.
- Enter the date and results of all stack tests in AFS, or its successor, and adjust the HPV status as appropriate.
  - The results of a stack test (Pass, Fail, Pending) are to be reported, in accordance with the AFS ICR, within 60 days of the test date. Temporarily reporting the results as pending is allowed for up to another 60 days by which time a compliance determination is to be made and the results recorded as Pass or Fail. Therefore, reporting the results of a stack test as pending is not to extend beyond 120 days of the test date.
- The compliance status of a facility will automatically revert from "in compliance" to "unknown" if an FCE is not completed:
  - (1) within the recommended evaluation frequencies, or
  - (2) in accordance with negotiated alternatives that extend the recommended evaluation frequencies.

- The Regions are to use the ACS system for the tracking of performance data against agreed-upon regional performance commitments. In addition to Region-specific performance information, the ACS is also used to provide information on State/local-specific contributions to commitments.
- Only the Regions are required to establish ACS commitments for the OECA CAA national initiatives. These ACS commitments do not apply to the State/local agencies.
- In addition to the ACS Commitment System, the Regions are to use the Air Toxics Commitment Tracker Tool as appropriate for monitoring progress toward achieving regional commitments for the Air Toxics Initiative. The tool is available for regional use at: [www.epa-otis.gov/otis/airtoxics](http://www.epa-otis.gov/otis/airtoxics).

## **XI. EVALUATION/OVERSIGHT**

- The primary reason for revising CMS in 2001 was to address deficiencies identified by the EPA IG with respect to lack of oversight and inconsistent implementation of the policy by the Agency. Hence, it is essential that EPA provide adequate oversight of the policy.
- At the end of each Federal fiscal year, the Regions shall evaluate whether the States/locals met their commitments, and in those cases where they did not, determine why and what adjustments need to be made for the following year. EPA Headquarters shall in turn conduct a similar analysis nationally. This information should be transmitted back to the appropriate officials in a timely manner so that they can make mid-course corrections in their program if necessary.
- In FY 2004, OECA implemented the SRF. The SRF is a multi-media effort developed in collaboration with the Environmental Council of the States to evaluate core performance in the air, water, and hazardous waste compliance and enforcement programs. It is built upon a common set of data metrics, which provide a summary of State activities in comparison to overall program goals, national averages, and data entry requirements. The twelve nationally consistent review elements are organized around compliance evaluations, violations, enforcement actions, penalties, and data quality. They provide a useful building block upon which to analyze the effectiveness of State compliance and enforcement programs. This baseline analysis is based on media-specific guidance such as CMS for the air program.
- SRF reviews were conducted for all 50 States from FY 2005 through FY 2007. During this time period, many in-depth CMS evaluations were conducted to supplement these SRF reviews in order to provide sufficient detail on the overall effectiveness of the CAA compliance programs.

- In FY 2008, OECA conducted an evaluation of the first round of reviews. Based on feedback from affected parties, enhanced guidance for conducting and reporting SRF reviews was developed, as were specific file review metrics. Hence, Regions are now to conduct a fuller SRF review assessing critical program components that would have previously been included under a separate CMS in-depth evaluation. The enhanced guidance and file review metrics necessitate, for example, that organizational structure be examined; the availability and use of resources to implement air compliance and enforcement programs be analyzed; targeting and alternative compliance monitoring approaches be discussed; data reporting be verified and the reasons for any discrepancies be explained; and the quality of FCEs be measured by reviewing CMRs/facility files to ensure complete documentation and accurate reporting of such evaluations.

Specifically, the CAA CMR/file reviews will enable Regions to evaluate whether:

- States/locals accurately report FCEs and such reported evaluations meet the definition of an FCE as provided in Section V above.
  - States/locals provide sufficient documentation to determine whether the compliance determination is accurate.
  - State/locals fully report compliance monitoring/enforcement activities and the results in AFS consistent with Section X above.
  - Compliance monitoring commitments have been successfully completed and whether such commitments are in the CMS Plan or other formally negotiated document as discussed in Section VIII above.
- To assist Regions in conducting an SRF review that includes the critical aspects of an in-depth CMS evaluation, additional guidance and documentation concerning SRF is available at: [www.epa-otis.gov/srf/srf\\_tracking.html](http://www.epa-otis.gov/srf/srf_tracking.html).
  - With the incorporation of the enhanced guidance and file review metrics into SRF reviews, Regions are not required to conduct separate in-depth CMS evaluations. However, Regions may elect to conduct separate evaluations as they deem appropriate to address State-specific concerns.
  - Headquarters shall conduct evaluations of each Region, and use the information to: monitor implementation of the policy; identify program deficiencies and successes; establish national trends; compare programs; and develop new national priorities. To the extent possible, Headquarters will inform Regions in advance of the criteria that will be used in evaluating Regional programs.