



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

July 9, 1998

Reply To
Attn Of: OEC-157

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MEMORANDUM

ANCHORAGE-AOO/A

SUBJECT: Compliance Assurance Evaluation Principles

FROM: Charles E. Findley
Deputy Regional Administrator

TO: Elaine G. Stanley
Director, Office of Compliance

Eric V. Schaefer
Director, Office of Regulatory Enforcement

Attached for your information are the second set of principles, governing program evaluations, that we mentioned during our conference call last week. They have been signed by all four Region 10 states. These principles are intended to clarify our expectations of delegated compliance assurance programs and to set out a constructive process for conducting program evaluations and resolving issues.

The principles were developed using existing national guidance, discussions with other Regions, and suggestions from the Region 10 states. They identify the essential elements that are common to all enforcement and compliance programs, and will be used in conjunction with program specific information. We plan to use this guidance in the program evaluations we have scheduled for this summer.

If you have questions about principles, please feel free to call me at (206)553-0454 or Ron at (206)553-1265.

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COMPLIANCE ASSURANCE PROGRAM EVALUATION PRINCIPLES

INTRODUCTION

These principles have been developed jointly by the States and EPA to help guide compliance assurance program evaluations. The principles will be used by EPA to evaluate the compliance and enforcement components of environmental programs that have been delegated to States. The principles define the elements of a successful compliance assurance program and formulate the basic operating principles for conducting an evaluation.

These principles represent the first phase of a two-phase effort to develop principles to guide program evaluations. This document constitutes Phase One and pertains specifically to focused evaluations of compliance assurance programs. Phase Two will be undertaken in the near future to develop principles to guide EPA reviews of a State's overall program, referred to as a "contextual" review. The contextual review will address the full range of a State program's activities and accomplishments and will include compliance assurance as one component of the overall program.

BACKGROUND

Compliance assurance program evaluations have traditionally taken a narrow view of the tools available for achieving compliance. These principles move beyond evaluating programs in terms of traditional enforcement activity measures, by taking a broader view of all the tools which can be used to achieve compliance and by focusing on measuring the environmental results of compliance assurance activities.

These principles strive to clarify our expectations of delegated compliance assurance programs and what is being measured as part of the compliance assurance program evaluations, because the evaluation process and criteria have not always been clear in the past. While the principles define the basic elements of a successful compliance and enforcement program, each EPA program will need to develop specific measures, based on its unique objectives and requirements, to evaluate how well the State program is performing within each of these elements.

These principles are designed to be consistent with and complement other planning and evaluation processes, including the PPA process, State and EPA strategic planning efforts, and compliance assurance agreements. The principles will continue to be refined over time so that they are as useful as possible to EPA and the States in conducting focused compliance assurance program evaluations, and will be expanded to also serve as principles for contextual program reviews.

I. PROGRAM EVALUATION GOALS AND OBJECTIVES

The primary goal of conducting program evaluations is to ensure a high level of program performance through the use of a variety of compliance assistance and

enforcement tools which results in high rates of compliance, provides credible deterrence, and achieves positive environmental results.

- ▶ The specific objectives for conducting program evaluations are as follows.
 - ▶ To help ensure that State programs:
 - meet federal legal requirements
 - achieve compliance and environmental benefits
 - ▶ To satisfy EPA's charge to:
 - evaluate state program adequacy and consistency in implementing/enforcing national standards
 - oversee state programs to help improve and strengthen them
 - ▶ To help States and EPA to:
 - identify program needs to meet established program goals
 - focus more on measuring environmental results and less on measuring activities and conducting detailed procedural reviews
 - share innovations/best practices among States/EPA regions
 - inform internal and external audiences of the evaluation process and results
 - strengthen compliance by strengthening the State/EPA partnership
 - provide a factual basis for differential oversight
- ▶ The initial program evaluations will help establish a compliance program profile which will be used as a starting point or baseline, as appropriate, against which progress towards mutually agreed-upon goals can be measured over time. This profile is important to help clearly and objectively identify both progress and problem areas.

II. FREQUENCY OF EVALUATIONS

▶ **Formal Evaluations**

EPA will align evaluations with the PPA/PPG process by conducting program evaluations on a mutually agreeable rotating cycle that is identified in the PPA. At a minimum, each program will be evaluated once during a six year period. The evaluation may be comprised of a single evaluation of the compliance assurance program, or of several smaller, focused evaluations of one or more individual evaluation areas (as identified in Section III of this document) conducted at different times during the six year period.

▶ **Routine/Ongoing Interaction**

Ongoing dialogue regarding program activities should continue in the interim between formal evaluations through a variety of routine communication mechanisms such as conference calls and meetings at both staff and management levels. States and EPA will also track selected output/outcome measures and will conduct oversight inspections as defined in the PPA and compliance assurance agreements.

III. **EVALUATION AREAS**

▶ **Program Performance and Effectiveness**

Achieving environmental results is the best indicator of a quality program. EPA and State Agencies increasingly are striving to measure program performance in terms of outcomes and environmental results (e.g., changes in emissions or in ambient air quality). Traditionally, program performance has been measured in terms of agency activities (e.g., number of inspections). At this point in time, EPA and State Agencies will evaluate available information on environmental results-related measures but will also continue to track activity-related measures. Over time it is expected that it may be feasible to place greater emphasis on environmental results measures as they are improved, and that activity measures may be de-emphasized.

EPA and State Agencies will analyze, and present available information on, each of the following types of measures:

• *Output measures* - short-term activity-based measures that are linked to program objectives (e.g., # of inspections)

• *Outcome measures* - linked to environmental objectives and results (e.g., actions taken by a regulated facility and results of those actions, such as compliance rates or the percent change in emissions)

• *Environmental Indicators* - linked to broad, long-term environmental goals and used to show trends in environmental conditions (e.g., changes in ambient air quality)

▶ **Complete, Accurate, and Current Knowledge of the Regulated Community**

A successful program is based upon an inventory of regulated sources, especially priority segments, which is accurate, current, and as complete as practicable. The data should in turn be accessible in an automated data system which is accurate and up-to-date.

▶ **Appropriate Targeting, Inspection, and Monitoring Strategy**

The targeting, inspection, and monitoring strategy should include the rationale and approach for selecting sectors, facilities and/or geographic locations on which to focus compliance assurance efforts. The inventory of the regulated community, as well as the national, regional, and state-specific priorities identified in the PPA, including pollution prevention, should be utilized as a basis for targeting, inspecting, and monitoring. The strategy should include field inspections and file reviews; inspections are needed to establish a field presence that provides a deterrent effect, encourages pollution prevention, and allows agencies to determine actual compliance.

▶ **Balanced Use of Tools**

It is important to have a dynamic compliance strategy which balances all the relevant tools which will be used to achieve compliance. Each State should have a deliberate approach that identifies the tools to be applied, in what balance, and how their success would be evaluated. Available compliance tools include compliance assistance and incentive programs, enforcement, inspections, compliance monitoring, field presence/accessibility to sources, publicity, and others. To evaluate the balanced use of tools, EPA would: 1) examine the State's rationale for the balance of tools it is employing; 2) consider how the strategy was applied during the period of review and whether the intended focus was carried out; and 3) review how well the tools had been utilized and/or how effective they had been in achieving improved compliance and environmental results. The EPA/State strategy on compliance assistance, currently under development, will also provide information on evaluating results of compliance assistance.

▶ **Timely and Appropriate Response to Significant Violations**

To serve as a general deterrent among the regulated community, a program must provide timely and appropriate responses to significant violations. This includes identifying high priority violators and aggressively pursuing these sources through formal enforcement actions; recovering economic benefit; following through in a timely fashion with adequate referrals for enforcement response; having no unexplained delays or backlogs in enforcement cases; providing a rapid escalation of response where non-compliance continues; adequately documenting violations and substantiating penalties; and dispensing equitable, fair, and consistent treatment.

▶ **Accurate Recordkeeping and Reporting**

A quality program maintains accurate and up-to-date files and records on source performance and Agency responses that are reviewable and accessible. Recordkeeping

should include some documented rationale for penalties sought to support defensibility in court, enhance negotiating posture, and lead to greater consistency. A quality program reports relevant data that is accurate, reliable, and complete to national data systems.

▶ **Clear and Enforceable Requirements**

Requirements established through both formal and non-formal enforcement actions should clearly define what a specific source must do by a date certain, in enforceable terms, to ensure the State can effectively monitor and measure compliance changes and as a basis for escalating its response to noncompliance.

▶ **Productive Relationship between Government and Regulated Community**

Developing a productive relationship with the regulated community, while maintaining an adequate deterrent effect, is important to achieving and maintaining compliance. Evaluation of this relationship should include interacting with a significant percent of the regulated community; using a variety of avenues of communication to reach the regulated community; offering compliance assistance to inform the regulated community about regulatory requirements; responding to feedback from regulated community and the public; and being viewed by the regulated community and the public as firm, fair, and professional.

Successful Partnerships with Co-Regulators

EPA and States, as co-regulators, work together to solve environmental problems. The PPA and compliance assurance principles, in particular, are documents which reflect this partnership through establishing productive ways of working together and identifying mutually agreed upon priorities and commitments. This element should be evaluated based on whether the State and EPA are each fulfilling the collaborative spirit of the partnership and adhering to the specific principles established in these documents.

▶ **Sound Program Management**

A quality program should have internal management systems in place for self-evaluation, monitoring program performance, reprioritizing efforts as necessary, and addressing emerging issues. Program priorities should be well articulated throughout the organization, and there should be a clear scheme for how the operations of other agencies and levels of government fit into the program and its priorities. A quality program should also ensure qualified and trained staff and mechanisms for helping to ensure consistent application of the regulations, enforcement, interpretations, equity, and other compliance issues.

IV. INFORMATION SOURCES

- ▶ States have the option of providing a self-assessment at the initiation of the evaluation, based on the evaluation criteria, to supplement other information sources listed here.
- ▶ A variety of other data sources may be used, including PPAs, compliance assurance agreements, significant violator tracking documents, State strategic plans, national data systems, documents kept on-site, results of special initiatives, interviews with agency staff or members of the regulated or affected community, relevant State laws and policies, and results of oversight inspections

V. COMMUNICATION

- ▶ Communication should be open and constructive, and lead to productive resolution of issues
- ▶ **EPA Communication with the State**
 - ▶ Communication will be focused on the evaluation areas in Section III, and the commitments in the PPA and compliance assurance agreements
 - ▶ EPA will communicate to the State compliance assurance program strengths as well as opportunities for improvement, including:
 - which strategies, policies, or operations should be retained;
 - what changes could make the program more effective in achieving high compliance rates, credible deterrence, and environmental results, or cost less; and
 - identification of major concerns and proposals for how to address them
- ▶ **State Communication with EPA**

States are encouraged to provide feedback to EPA on the impact of EPA's direct implementation and workshare efforts and on EPA's adherence to the State/EPA Compliance Assurance Principles, PPA provisions, and any other partnership efforts.

VI. PROCESS MANAGEMENT

- ▶ **Advance Work to Help Ensure a Successful Evaluation Process**
 - ▶ The evaluation scope, evaluation areas that will be focused on, measures, information sources, relevant policy documents, and resources will be clearly defined at least sixty days before the evaluation begins
 - ▶ While the evaluation areas and corresponding measures should be flexible (e.g., can include special initiative results), the areas and measures should be agreed to in advance so that there are "no surprises" (e.g., conducting compliance assistance special initiatives instead of core enforcement requirements).

▶ **Evaluation Feedback Steps**

- ▶ EPA will discuss its findings with the State at an out-briefing within 30 days of the on-site review, prior to the issuance of the draft report
- ▶ EPA will provide the draft written evaluation to the State within 90 days after the evaluation has been completed.
- ▶ The State has up to 30 days to provide a response back to EPA
- ▶ EPA will issue a draft final report within 30 days that reflects State's comments
- ▶ The State has up to 30 days to provide comments on the draft final report
- ▶ EPA will issue the final evaluation report within 30 days of receiving State comments. State views, if the State so requests, will be included in the final written evaluation.

▶ **Relationship to PPA and Compliance Assurance Agreements**

- ▶ Program evaluations will occur within the framework of the PPA process:
 - The PPA will address whether (and in what areas) a program evaluation will occur in each State over the coming two years; and
 - States will be evaluated on the commitments identified in the PPA and Compliance Assurance Agreements and based on the evaluation areas in Section III of this document.

▶ **Evaluation Phases**

These focused program evaluations can be conceived of as having three phases: collection of information, interpretation of information, and the response delivered regarding the evaluation.

▶ **Manager/Staff Involvement**

- ▶ Different people may be involved in each evaluation phase. Senior manager involvement is critical to the success of the evaluation and there will be a senior manager assigned to lead the evaluation. Senior manager involvement is most important during the process development and feedback phase.
- ▶ Appropriate EPA and State personnel involved in the evaluation will meet together as necessary during the evaluation to assure consistent understanding of issues and feedback
- ▶ EPA will provide training on these principles to staff conducting the evaluations.

▶ **Improving the Process Over Time**

- ▶ The frequency, scope and level of detail of the evaluation may be adjusted based on scope, detail and results of prior evaluations and other performance data (e.g., compliance rates). The PPA will reflect these adjustments over time in the evaluations.
- ▶ EPA/States should agree on the process for assessing the quality of the evaluation performed

- ▶ These compliance assurance program evaluation principles will be revised and expanded to serve as principles for contextual program reviews (i.e., review of the full range of program activities and accomplishments, with compliance assurance as a component of the overall program).

▶ **Differences Across States**

- ▶ While States should not be held to different standards in the evaluations, it is important to recognize differences in size and composition of the regulated universe in each State and alternative methods States may use in addressing the evaluation areas identified in this document
- ▶ EPA will use differential oversight to assess state performance and identify actions needed to correct problems or recognize good performance.

Intergration with Existing Agreements

These compliance assurance principles reflect the current positions of the State Agencies and EPA Region 10. As appropriate they can be used to assist in the implementation of existing agreements. EPA Region 10 and the State Agencies will adhere to these principles when developing any future state/EPA agreements addressing compliance assurance program evaluations.

Dispute Resolution

EPA and the State Agencies recognize that disputes may occur. All parties will attempt to resolve these disputes promptly and at the lowest level. If disputes cannot be resolved within seven days, they will be referred to the supervisor level. This supervisory referral and resolution process will continue, if necessary, to the level of State Director and EPA Regional Administrator.

Disclaimer

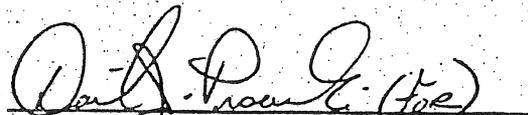
Nothing in these principles shall be construed to constitute a valid defense by regulated parties in violation of any state or federal environmental statute, regulation or permit. This agreement is not intended to, and does not, waive any authorities available to the states and EPA. Nor can this agreement be used to create a cause of action not otherwise available against the states or EPA.

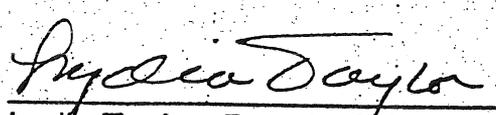
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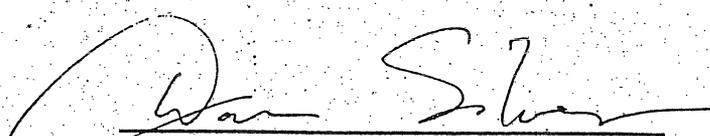
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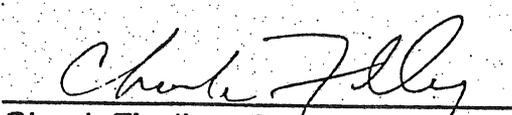
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Environmental Quality


Dan Silver, Deputy Director
Washington Department of Ecology


Chuck Findley, Deputy
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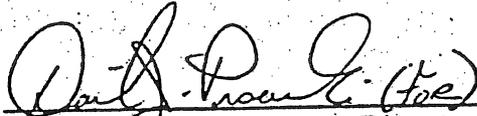
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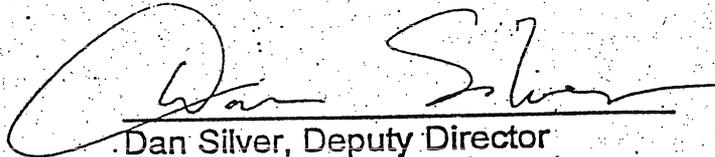
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Al Ewing, Deputy Commissioner
Alaska Department of
Environmental Conservation

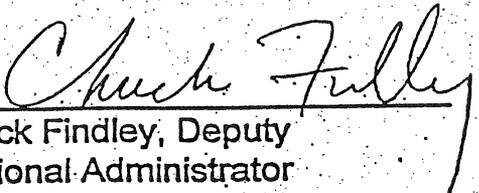


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