

EPA's Office of Enforcement and Compliance Assurance – Areas of Proposed Budget Adjustment for FY13

In 2012 and beyond, EPA is focusing its enforcement and compliance work and resources on the highest impact, highest priority work. To meet these goals, we are ramping up work in top-priority areas like air toxics and drinking water. We are also investing in next generation compliance, electronic reporting, and new monitoring technologies, which will position EPA's enforcement program to more efficiently and effectively address the biggest pollution threats while reducing costs for sources and states.

We are taking these steps while also facing tighter budgets, which means that now, more than ever, EPA's enforcement and compliance program must prioritize its work and ensure that resources are available for our top priorities. Investing in top priorities combined with declining budgets means that we will have to cut back in some areas. These reductions result from a strategic decision to make some tough choices and to ensure that we direct resources to the highest-priority problems we are facing today where EPA can make a real difference. In many cases it is the success of prior work at both the federal and state level that makes a reduction in effort now viable.

What follows is a list of the areas in which EPA's enforcement program plans to reduce resources. While these areas remain important, as noted above, in a time of declining budgets, we must focus limited resources on those areas that have the greatest impact on health and the environment.

I. Disinvestment Area

Acid Rain: Given tight budgets, EPA is looking for efficiencies in areas of the air program, such as the area of acid rain. Sources of acid rain consistently have high compliance rates because nearly all sources have a Continuous Emissions Monitor (CEM) system that must be used and their sulfur dioxide allowances are tracked in a national database. The use of CEMs, transparency, continued and robust enforcement of the Clean Air Act's New Source Review requirements, and some other means of addressing the pollutants covered by the acid rain program mean that EPA's enforcement program is able to shift its specific acid rain resources to higher-priority work.

[Discussed in OECA's draft NPM Guidance at p. 31.]

II. Reduction to a Minimal National Presence

Biosolids: In times of declining resources, EPA is looking for efficiencies in its work, and plans to reduce work in the area of biosolids enforcement. To monitor this area, EPA plans to rely on straightforward performance standards and recordkeeping; reporting requirements that, once EPA's e-reporting rule is fully implemented, will provide for increased transparency and accountability with this type of pollution; and inspections for

related pollution problems. This will allow EPA enforcement to significantly decrease its focus on biosolids, and shift resources to higher-priority work.

In response to comments from several states, we have decided to maintain a minimal federal presence in this area, which is a change from the draft NPM Guidance.

[Discussed in OECA's draft NPM Guidance at p. 40.]

EPCRA 311/312: EPCRA Sections 311 and 312 require facilities to develop or have available Material Safety Data Sheets and to provide annual reports on a facility's chemical inventory directly to local emergency response entities. State and local governments also have enforcement authorities under the statute. The front-line compliance monitoring and enforcement presence of state and local governments allows EPA's enforcement program to reduce its resources currently devoted to EPCRA 311/312, and increase focus on the pollution problems that require a federal and national enforcement presence. EPA will maintain a minimal federal presence in this area and will retain the availability to respond to significant enforcement issues in this area.

In response to comments from several states, we have decided to maintain a minimal federal presence in this area, which is a change from the draft NPM Guidance.

[Discussed in OECA's draft NPM Guidance at p. 87.]

Audit Policy/Self-Disclosures: Since implementation of the Audit Policy began in 1995, EPA's enforcement program has increased its understanding of environmental compliance auditing, and believes that auditing has become more widely adopted by the regulated community. EPA has found that most violations disclosed under the Policy are not in high priority enforcement areas for protecting human health and the environment. In addition, the outcome benefits measured for voluntary disclosures do not justify the current resource commitment for implementing the current Audit Policy; therefore, the enforcement program plans to reduce substantially the enforcement resources dedicated to implementation of the Policy. EPA is considering implementing a modified Audit Policy program that is self-implementing, and will also consider providing penalty mitigation to a company involved in an EPA enforcement action, if it can show conformance with the Audit Policy.

[Discussed in OECA's draft NPM Guidance at p. 14.]

Wood Heater Program: New regulatory approaches being proposed by EPA's Office of Air Quality Planning and Standards provide opportunities for EPA to utilize its resources more effectively in monitoring and enforcement, while at the same time expand the universe and tighten emission standards. The proposed rule, expected to be final in FY13, intends to use third-party ISO-accredited laboratories to review certification reports and conduct on-site QA/QC inspections; require electronic reporting to reduce paperwork burden and expedite review of certification applications; delegate compliance

monitoring and enforcement activities to State Agencies; and streamline the compliance audit process to reduce need for on-site inspections. EPA's role will focus on managing the certification process, implementing and overseeing the third-party program beginning in FY14, and conducting limited compliance and enforcement activities where there are issues of national importance. Resource savings will be directed to higher-priority enforcement work. This approach is possible because of the substantial emission reductions achieved by the manufacturers of wood heaters brought about by the current program.

[Discussed in OECA's draft NPM Guidance at p. 31.]

Asbestos NESHAPs: The Clean Air Act (CAA) National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos specifies work practices to be followed during demolitions and renovations of asbestos-containing structures, installations, and buildings (excluding residential buildings that have four or fewer dwelling units). Building owners and/or contractors are required to notify applicable State and local agencies and/or EPA Regional Offices before demolitions or renovations of buildings that contain a certain threshold amount of asbestos. EPA and states conduct inspections as needed, take enforcement actions when violations of notification or work practices are identified, and make Applicability Determinations (AD) under the regulations.

In light of budget constraints expected in FY13, EPA will focus its limited Asbestos NESHAP enforcement resources on high-priority federal activities such as assessing, advising, and supporting state and local emergency response and recovery after catastrophic situations (e.g., earthquakes, hurricanes, and tornadoes) where structures with asbestos containing materials have been destroyed and normal procedures for abating asbestos before demolition are not feasible. Headquarters' development of new regulatory applicability determinations will be limited to requests that pose issues of first impression that are of national importance. Criminal enforcement will continue to be a viable and robust tool to address criminal violations of the Asbestos NESHAP regulations. Delegated state programs will continue to conduct the day-to-day activities associated with the receipt of notifications and related compliance monitoring and enforcement activities.

[Discussed in OECA's draft NPM Guidance at p. 31.]

PCBs: EPA's enforcement program has decided to focus its PCB enforcement resources on nationally-significant situations involving greatest threats to health. With fewer resources overall, we will focus the remaining resources on the nationally-significant PCB civil and criminal violations that may present a significant risk to human health or the environment, and maintain some field presence at EPA-approved commercial PCB storage and disposal facilities. EPA's enforcement program will also continue to support the efforts of other Agency programs to promulgate new PCB regulations and guidance.

[Discussed in OECA's draft NPM Guidance at p. 58 and 65.]

AHERA-Asbestos: Since 1986, when the Asbestos Hazard Emergency Response Act (AHERA) amended TSCA to require schools to inspect their buildings for asbestos-containing materials and implement asbestos-management programs, EPA has devoted considerable resources to educating schools about the risks associated with asbestos and assisting with managing these risks. The success of these efforts means that EPA is able to reduce its civil and criminal enforcement presence in this area to only the most egregious violations of AHERA. EPA's asbestos for schools program, run out of EPA's Office of Pollution Prevention and Toxics, will continue to be a valuable resource for schools that have questions about managing asbestos.

[Discussed in OECA's draft NPM Guidance at p. 58 and 65 (civil), and p. 81 (criminal).]

FIFRA Imports: The planned transition to an automated processing system in FY14 (the Automated Commercial Environment in the International Trade Data System (ACE/ITDS)) creates opportunities to reduce the investment EPA's enforcement program makes in processing of FIFRA Notices of Arrival (NOAs) to a minimal national presence. Once fully functional, ACE/ITDS will process the majority of NOAs, eliminating the need for manual review and approval by EPA, and allowing EPA to reduce its resources currently devoted to this work.

[Discussed in OECA's draft NPM Guidance at p. 69.]

Brownfields: CERCLA's landowner liability protections are designed to be self-implementing, and EPA's enforcement program has in place a robust set of guidance documents that can assist potential purchasers and developers of brownfield sites with questions about liability. Relying more on these advances allows the EPA enforcement program to shift some of the resources previously devoted to site-specific brownfields enforcement issues to work where enforcement is necessary to provide protections for the public. We will maintain a minimal national presence to allow us to address liability at a particular site when necessary to promote redevelopment.

[Discussed in OECA's draft NPM Guidance at p. 78.]

Good Lab Practices: The Good Laboratory Practices (GLP) program is evaluating utilizing new technology, additional methods of compliance monitoring, and other implementation approaches, such as the use of third-party or peer audits, to work more efficiently and focus EPA resources on the most significant problems in assuring high-quality registration studies. The enforcement program will work closely with EPA's Office of Chemical Safety and Pollution Prevention to identify the laboratories or studies that warrant national inspection. This focus will allow the shifting of some current GLP personnel to other high-priority monitoring and enforcement work. As this evaluation proceeds, EPA's enforcement program will raise the new approaches to the international community as opportunities for operating government programs and using resources more efficiently.

[Discussed in OECA’s draft NPM Guidance at p. 69, footnote 9.]

Stratospheric Ozone: Through a multitude of innovative and flexible regulatory approaches and voluntary programs, the Agency continues to meet its responsibility for protecting the stratospheric ozone layer. For example, the Office of Air and Radiation (OAR) has several voluntary partnerships to encourage compliant or superior performance, such as “Green Chill,” a partnership with those grocery store chains that want to improve their environmental performance, while leaking less expensive refrigerant gas. OAR also implements regulatory programs to phase out the production and import of ozone-depleting substances in the U.S. and guides the transition to non-ozone depleting substitutes while ensuring adherence with the Montreal Protocol. The effectiveness of these programs allows the enforcement program to reduce enforcement focus in this area. Through regulatory and voluntary efforts as well as international engagement, education, and outreach, the Agency will continue to make significant strides to protect the ozone layer, the environment, and people’s health.

In response to early comments, we have decided to maintain a minimal federal presence in this area, which is a change from the draft NPM Guidance.

[Discussed in OECA’s draft NPM Guidance at p. 31.]

EPA Enforcement Programs Slated for Significant Reductions

Underground Injection Control (UIC): EPA plans to reduce work on smaller and more routine UIC violations and direct our remaining UIC enforcement effort to UIC violations that pose the greatest threat to health. This approach is consistent with the data that shows generally good compliance at most facilities that EPA inspects, supporting a strategy of focusing our attention on the worst problems. This resource shift is not expected to affect compliance or enforcement activities where EPA directly implements the program, or UIC activities related to implementation of the Energy Extraction National Enforcement Initiative.

[Discussed in OECA’s draft NPM Guidance at p. 47.]

Underground Storage Tanks (USTs): EPA anticipates providing continued support for UST inspections, which will result in a strong understanding of compliance issues. Accordingly, the Agency believes that it can reduce enforcement work on smaller and more routine UST violations and direct remaining UST enforcement effort to violations that pose the greatest threat to health, and where a federal response is necessary. EPA intends to maintain adequate compliance monitoring and enforcement resources to directly implement the UST program in Indian country and in states and territories that do not have state program approval, where necessary. The enforcement program will also continue to support the Office of Underground Storage Tanks in promulgating any UST regulations and help develop innovative approaches to promote and maintain

compliance using next generation compliance and enforcement methods.

[Discussed in OECA's draft NPM Guidance at p. 55.]

Compliance Assistance (non-centers): Advances in information technologies and the widespread availability of computer access make it possible for EPA to reconsider the delivery of compliance assistance. EPA can provide on demand assistance via the web for many regulated parties. States provide the vast amount of direct, day-to-day (or "retail") compliance assistance, while third-party providers (such as academic institutions, non-profits, trade associations or private consultants) offer more technical guidance and best practices, often on a sector-specific basis. EPA programs have an important role to provide compliance guides for new regulations that impact small business and do outreach as rules are being promulgated. Anticipating tight budgets in FY13 and beyond, EPA's enforcement program needs to focus its limited resources on the most pressing environmental and noncompliance problems. In that context, OECA is planning to reduce its investment in compliance assistance and direct our compliance assistance resources where they can have the greatest national impact. Advances in IT make this greater impact possible, as we focus on wholesale distribution of compliance guides and materials, especially via the web, development of two-way communication (made possible by electronic reporting) to deliver electronic assistance, and maximizing the use of inspectors to direct companies to assistance resources.

[Discussed in OECA's draft NPM Guidance in each media-specific section, e.g., at p. 28.]

Superfund Enforcement and Federal Facilities Superfund Enforcement: Given budget limitations, EPA is making a modest reduction in the Superfund enforcement program, at private and federal facility sites. We think these reductions can be achieved while recognizing that a strong cleanup enforcement program is essential to promote the Administrator's priority of Cleaning Up Our Communities. EPA believes that savings can be achieved by focusing Superfund enforcement resources on the highest-priority sites and those enforcement activities that achieve the biggest return on our investment.

Criminal Enforcement: Anticipating tight budgets in FY13 and beyond, EPA is focusing its criminal enforcement resources on the criminal violations that have the biggest impact on health and the environment. Recognizing that such cases are often more complex and demanding, and that we will have fewer resources in total, we expect to cut back on the smaller impact cases that, while important, have less potential for broader effect. The areas of expected reduced effort include matters on which other agencies have effective criminal enforcement programs – like the Coast Guard in vessel pollution cases – or where civil enforcement tools may be effective to redress violations – like stormwater violations. EPA will retain capacity to address particularly egregious criminal violations in these and other areas where budget cuts reduce the amount of more routine enforcement we are able to do.