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

OCT 0 4 2016

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

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

FROM: David A. Hindin
Director
Office of Compliance

TO: Regional Compliance/Enforcement Division Directors

Attached is a copy of the revised Clean Air Act Stationary Source Compliance Monitoring Strategy (CAA CMS). In replacing the 2014 CMS, this strategy has been revised to take into account a recently released EPA Office of Inspector General (OIG) report concerning the CAA compliance monitoring program. The CMS also has been revised to expand the strategy to apply to the EPA Regions that have direct implementation authority in Indian country and territories of the United States.

The OIG report *Clean Air Act Facility Evaluations are Conducted, but Inaccurate Data Hinder EPA Oversight and Public Awareness* (No.16-P-0164; May 3, 2016; https://www.epa.gov/office-inspector-general/report-clean-air-act-facility-evaluations-are-conducted-inaccurate-data) documented that CAA evaluations are generally being conducted and completed in accordance with the CMS. However, in its report, the OIG also noted that the CMS did not provide specific instruction on how long compliance monitoring reports (CMRs) should be retained. To address this concern, the OIG provided the following recommendation: *"Update the EPA's CMS to specify the length of time that states and local air districts should retain evaluation records."* In response to this recommendation, we agreed as a Corrective Action to revise the CMS accordingly by October 1, 2016. The attached CMS which includes recommended retention time frames for CMRs satisfies this Corrective Action. See Page 16 of the strategy. The revised CMS recommends that delegated agencies retain CMRs in accordance with their respective policies, processes, and requirements or, in the absence of such directives, consistent with EPA records policy.

In revising the CMS to address the above concern identified by the OIG, we also have taken the opportunity to extend the CMS to include the EPA Regions that have direct implementation in Indian country and territories of the United States. This extension establishes for the applicable Regions the same recommended evaluation frequencies for the CMS universe of sources located in Indian country and territories for which they have direct implementation responsibilities.

The revisions to this strategy reflect feedback from the Regions, the national and regional CAA organizations, as well as individual state and local agencies. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, we provided Tribal governments with delegated authority the opportunity to comment on the revisions. I appreciate your Region's continued efforts in working with your delegated agencies to ensure the CMS is being implemented, and your efforts to now follow the minimum evaluation frequencies for CMS sources in Indian country for which the Region has CAA direct implementation.

Please share this revised strategy (https://www.epa.gov/compliance/clean-air-act-stationary-source-compliance-monitoring-strategy) with your counterpart at all state, local, tribal, and territorial agencies in your Region. If you or your staff has any questions concerning the CAA CMS, please contact Robert Lischinsky at 202-564-2628 or at lischinsky.robert@epa.gov.

Attachment

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CLEAN AIR ACT
STATIONARY SOURCE COMPLIANCE MONITORING STRATEGY
October 2016

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, federally-recognized Indian tribes, 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.

Please direct questions concerning this policy to Robert Lischinsky of the Monitoring, Assistance, and Media Programs Division in the Office of Compliance at (202) 564-2628 or at Lischinsky.robert@epa.gov.

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ACRONYMS

ACS	Annual Commitment System
CAA	Clean Air Act
CMS	Compliance Monitoring Strategy
CEM	Continuous Emissions Monitoring
CMR	Compliance Monitoring Report
ECHO	Enforcement and Compliance History Online
EPA	Environmental Protection Agency
FCE	Full Compliance Evaluation
HON	Hazardous Organic NESHAP
HPV	High Priority Violator
ICIS	Integrated Compliance Information System
ICR	Information Collection Request
MACT	Maximum Available Control Technology
MDR	Minimum Data Requirement
NACAA	National Association of Clean Air Agencies
NESHAP	National Emission Standards for Hazardous Air Pollutants
NPMG	National Program Managers Guidance
NPMS	National Performance Measures Strategy
NSPS	New Source Performance Standards
NSR	New Source Review
OC	Office of Compliance
OECA	Office of Enforcement and Compliance Assurance
PCE	Partial Compliance Evaluation
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
QA	Quality Assurance
SM	Synthetic Minor
SIP	State Implementation Plan
SRF	State Review Framework

CLEAN AIR ACT STATIONARY SOURCE COMPLIANCE MONITORING STRATEGY
October 2016

I. INTRODUCTION

● The Clean Air Act (CAA) Stationary Source Compliance Monitoring Strategy (CMS) was last revised in July 2014. The EPA revised the CMS to provide increased flexibility to states, local government agencies, federally-recognized Indian tribes (tribes) and territories of the United States to maximize resources and expand coverage of regulated facilities with the most potential for significant impact on human health and the environment. Such flexibility included an expanded set of tools for determining compliance and took into account opportunities created by advanced monitoring technologies such as geospatial measurement of air pollution, fence-line monitoring, infrared cameras, and photoionization detectors.

● The CMS is a dynamic, evolving document as the Agency obtains additional input from the delegated agencies and assesses their experiences in implementing compliance monitoring programs. The CMS also reflects continued feedback from regional state/local air organizations as well as other oversight mechanisms such as the EPA State Review Framework (SRF), the Office of Inspector General (OIG) evaluations as well as the Government Accountability Office evaluations.

● Since the 2014 CMS revision, the OIG released a report documenting that CAA evaluations were found to generally be conducted and completed in accordance with the CMS. See *Clean Air Act Facility Evaluations are Conducted, but Inaccurate Data Hinder EPA Oversight and Public Awareness* (No. 16-P-0164; May 3, 2016; https://www.epa.gov/office-inspector-general/report-clean-air-act-facility-evaluations-are-conducted-inaccurate-data).

● As part of the overall OIG review of CAA evaluations, the OIG noted that the 2014 CMS provided guidance that compliance monitoring reports (CMRs) should be maintained as a record of compliance monitoring activities. However, the OIG also noted the CMS did not provide specific instruction on how long to retain the CMRs and recommended the CMS be updated to specify a retention period.

● As a result of the OIG recommendation, the CMS includes a specified time frame for retaining CMRs. In revising the CMS to account for the OIG review, the EPA is taking this opportunity to update the document to reflect current policies and practices, as well as to recognize the increased emphasis to integrate Next Generation Compliance into compliance monitoring activities. Through this revised CMS, EPA continues to encourage utilization of next generation approaches and innovative compliance monitoring activities to promote and enhance compliance within the regulated community. Such approaches include advanced monitoring, electronic reporting, and expanded transparency to more effectively and efficiently identify and address potential noncompliance.

● In addition, the CMS has been extended to include the EPA Regions that have direct implementation authority in Indian country and territories of the United States.

● With this revision, the CMS continues to have a focus on the primary goals of compliance monitoring which include:

- assessing and documenting compliance with permits and regulations,
- supporting the enforcement process through evidence collection and case development,
- monitoring compliance with enforcement orders and decrees,
- deterring noncompliance, and
- providing feedback to permit and rule writers to develop permits and regulations that can be more effectively and efficiently implemented.

● The major elements of the CMS are as follows:

(1) Emphasis is placed on Title V major sources and a limited subset of synthetic minor sources.

(2) Minimum frequencies for compliance evaluations to be conducted by states/locals/tribes/territories are recommended for making compliance determinations at facilities covered by the policy. However, alternative evaluation frequencies may be negotiated with the Regions to enable states/locals/tribes/territories to address important local compliance issues. Regarding the minimum frequencies, the time frames are based on Federal fiscal year, not state fiscal year or calendar year. While CMS plans and commitments of states/locals/tribes/territories are developed consistent with the EPA planning process, the policy still allows flexibility in planning compliance evaluations.

(3) The policy explicitly recognizes that a variety of tools ranging from self-certifications to traditional stack tests are available and should be used to evaluate compliance. The use of all such tools can help achieve efficiencies and reduce expenses. It further recognizes 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 Title V annual 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 is recommended.

(4) Three types of compliance monitoring are provided to encompass all of the means used to make a compliance determination. The compliance monitoring types are Full Compliance Evaluations (FCEs); Partial Compliance Evaluations (PCEs); and Investigations.

(5) We recognize that there are advantages to the Regions and states/locals/tribes/territories in developing CMS plans annually and encourage the Regions and states/locals/tribes/territories to continue with that frequency, as appropriate. The minimum frequency is once every two years unless otherwise negotiated with the Region and approved by the Office of Enforcement and

Compliance Assurance/Office of Compliance (OECA/OC).

(6) Evaluation and oversight is through the establishment and use of the SRF as the tool for the Regions to conduct oversight of compliance and enforcement programs of the states/locals/tribes/territories that would include in-depth evaluations of CMS implementation.

● Through the establishment of the three compliance monitoring types and the recognition of the variety of compliance monitoring tools available to evaluate compliance beyond the traditional on-site evaluations, the CAA CMS promotes the use of flexibility in developing alternative CMS plans. However, electronic reporting and the use of new technologies and advanced emissions monitoring create additional compliance monitoring opportunities and provide the potential to collect a wider array of compliance information. It is important that states/locals/tribes/territories be able to utilize these new technologies and information to target and assess compliance. EPA encourages states/locals/tribes/territories to make compliance monitoring and enforcement information available to the public where feasible and appropriate.

● The CMS provides for a broader range of compliance monitoring activities and encourages the use of next generation approaches and tools, as appropriate, to allow agencies to further focus on their most significant environmental concerns and pollution problems in the most efficient manner.

II. GOALS OF THE COMPLIANCE MONITORING STRATEGY

● The five major goals are as follows:

(1) Provide national consistency in developing stationary source air compliance monitoring programs, while at the same time provide states/locals/tribes/territories with flexibility to address local air pollution and compliance concerns.

(2) Improve communication between states/locals/tribes/territories 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.

(5) Establish a consistent level of evaluation coverage and environmental and public health protection by all delegated agencies, including EPA where EPA has direct implementation authority.

III. OVERALL PROCESS

- The overall process is described below:

(1) CMS plans are submitted 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 OC for review prior to regional approval. During the discussion of the CMS plans, Regions should share their priorities and focus areas with their states/locals/tribes/territories to optimize resources, avoid duplication of effort, and provide opportunities for collaboration. CMS plans for the EPA Regions with direct implementation authority in Indian country and territories will be satisfied via the EPA Annual Commitment System (ACS) process. Alternative regional CMS plans are to also be forwarded to OC for approval.

(2) Each year, the Regions incorporate the CMS plans into the ACS. Separate commitments should be made for states/locals/tribes/territories and the Regions that are consistent with the OECA National Program Managers (NPM) Guidance and any identified OECA CAA National Initiatives.

(3) States/locals/tribes/territories and Regions maintain records of their compliance monitoring activities, and enter facility-specific compliance and enforcement data in the national air compliance and enforcement data system, ICIS-Air.

(4) Each year, states/locals/tribes/territories and Regions review the results of the compliance monitoring activities and prepare an annual update to the plan as necessary. Major redirections should be discussed as they arise.

(5) Regions conduct in-depth evaluations of the overall compliance monitoring program of the state/local/tribe/territory utilizing SRF. Headquarters conducts evaluations of the Regional programs as part of routine oversight activities. Regions may also conduct oversight or joint evaluations to obtain insight into the quality of state/local/tribe/territory-led evaluations.

IV. SCOPE OF POLICY

- EPA recognizes that states/locals/tribes/territories 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/tribes/territories, but focuses on federally enforceable requirements for the following source categories: (1) Title V major sources (as defined in CAA §501(2)); and

(2) synthetic minor sources that emit or have the potential to emit (PTE) at or above 80 percent of the Title V major source threshold (SM-80s).

For purposes of this policy, PTE 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 an air pollution control agency of a state/local/tribe/territory.

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/tribes/territories 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/tribe/territory does not differentiate facilities based on potential to emit, all synthetic minors should be designated as SM-80s.

● This policy also recognizes that some Regions have direct implementation of the CAA in Indian country and territories. The CMS recommended minimum evaluation frequencies for Title V major and SM-80 sources are applicable to such Regions to establish a consistent level of evaluation coverage and environmental and public health protection by all delegated agencies, including the EPA where EPA has direct implementation authority.

● Please note that this policy does not include the following specific CAA programs:

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

V. COMPLIANCE MONITORING TYPES

● States/locals/tribes/territories 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. They also are encouraged, when feasible, to use advanced emissions/pollutant detection technology and electronic reporting.

- In support of the EPA strategy of Next Generation Compliance (https://www.epa.gov/compliance/next-generation-compliance), the CMS recognizes today's challenges require a modern approach to compliance monitoring and promotes to, the fullest extent possible, the use of new and emerging monitoring and information technologies as well as increased transparency. Through modern and innovative approaches, EPA and the

delegated agencies are better able to protect public health and the environment.

● Compliance monitoring activities, as discussed below, encompass all of the means used to make a facility specific compliance determination. These activities can include both on-site compliance evaluations and off-site record reviews. The activities can be initiated based on a variety of factors such as the CMS plan of a state/local/tribe/territory, priorities of the state/local/tribe/territory, citizen tips and complaints, or for cause.

● Consistent with this approach, there are three types of compliance monitoring: Full Compliance Evaluations (FCEs), Partial Compliance Evaluations (PCEs), and Investigations. Each of these types of compliance monitoring is defined below:

(1) Full Compliance Evaluations

A Full Compliance Evaluation (FCE) is a comprehensive evaluation to assess compliance of the facility as a whole and resulting in a compliance determination. 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 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 or other documents, 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. The implementation of Next Generation Compliance will assist in compliance monitoring by allowing, whenever suitable, innovative and modern approaches that go beyond single facility on-site evaluations. 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/tribes/territories 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/tribe/territory 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

- Where appropriate and feasible, the utilization of advanced monitoring technologies to detect and document emissions and record ambient conditions. The use of advanced emissions/pollutant detection technology is valuable as a screening tool to identify pollution problems and better focus field activities on the pollutant, process, and equipment of concern. It also may be useful to identify and measure noncompliance. Examples of such technologies include infrared cameras, fenceline monitors, sensor network-based leak detection systems, mobile methane monitors, and photoionization detectors. The use of advanced emissions and pollutant detection technology that, for example, find pollution that was previously "invisible" can assist states/locals/tribes/territories and Regions to more effectively target and monitor compliance and protect communities.

An FCE should be completed within the Federal fiscal year in which the commitment is made. However, flexibility is provided 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/tribes/territories and Regions 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.

An on-site FCE should be conducted by an authorized inspector. EPA employees and individuals of states/locals/tribes/territories authorized to conduct evaluations on behalf of EPA using EPA Federal inspector credentials should be conducting evaluations consistent with appropriate federal requirements. See EPA Order 3500.1 (*Training Requirements for EPA Personnel Who Are Authorized to Conduct Civil Compliance Inspections/Field Investigations and EPA Inspector Supervisors*); EPA Order 3510 (*EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes and Other Compliance Responsibilities*); and the CAA stationary source training requirements. An authorized inspector may include an approved third party.[1] Inspectors conducting evaluations for states/locals/tribes/territories should be compliant with their respective agency policies and processes. An off-site FCE should be conducted by an authorized inspector or other credible regulator (e.g., an individual designated by the EPA or state/local/tribe/territory with sufficient knowledge, training, and experience to assess compliance).

(2) Partial Compliance Evaluations

A Partial Compliance Evaluation (PCE) is a documented compliance evaluation conducted for the purpose of making a compliance determination and focusing on

1 For issues concerning the use of authorized representatives for compliance monitoring activities under the Clean Air Act *see United States v. Stauffer Chem. Co.*, 464 U.S. 165 (January 10, 1984); M. Alushin and E. Reich Memorandum to Regional Counsels, et al, *Use of Contractors to Conduct Clean Air Act Inspections after the Supreme Court's Decision in United States v. Stauffer Chemical (*February 22, 1984); *and* D. Kling Memorandum to Regional Federal Facilities Senior and Program Managers, *Clarification on the Use of Contract Inspectors for EPA's Federal Facility Compliance Inspections/Evaluations* (September 19, 2006). *See also*, Guidance for Issuing Federal EPA Inspector Credentials to Employees of Contractors to Conduct Inspections on Behalf of EPA, (May 31, 2013); Guidance for Issuing Federal EPA Inspector Credentials to Senior Environmental Employment Program Enrollees to Conduct Inspections on Behalf of EPA, (September 30, 2013).

a subset of processes, regulated pollutants, regulatory requirements, or emission units at a given facility. Examples of specific activities include, but are not limited to, the following:

- conduct source performance tests, sampling, and monitoring;
- visible emission observations;
- case development evaluation, including evaluation of responses to formal information requests (e.g., CAA § 114);
- consent decree follow-up;
- Continuous Monitoring System Quality Assurance (QA) Audit;
- review of facility reports or documents such as Quarterly Excess Emission Reports and semi-annual deviation reports;
- review of facility records and operating logs, testing/sampling plans, and monitoring data;
- review of relevant process, emissions, and inventory information;
- review of facility-specific fenceline and ambient monitoring;
- ambient environmental screening using advanced monitoring technologies for a group of facilities or geographic area of interest for use in subsequent compliance evaluations.

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 Hazardous Organic NESHAP (HON) Maximum Available Control Technology (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.

PCEs are generally less time-consuming and resource-intensive than FCEs in that they are targeted evaluations used to assess compliance with targeted programs, standards, and/or processes. As a result, PCEs can be a useful tool in screening for and identifying non-compliance in a cost-effective manner.

An on-site PCE should be conducted by an authorized inspector. EPA employees and individuals of states/locals/tribes/territories authorized to conduct evaluations on behalf of EPA using EPA Federal inspector credentials should be conducting evaluations consistent with appropriate federal requirements. See EPA Order 3500.1 (*Training Requirements for EPA Personnel Who Are Authorized to Conduct Civil Compliance Inspections/Field Investigations and EPA Inspector*

Supervisors); EPA Order 3510 (*EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes and Other Compliance Responsibilities*); and the CAA stationary source training requirements. An authorized inspector may include an approved third party. Inspectors conducting evaluations for states/locals/tribes/territories should be compliant with their respective agency policies and processes. An off-site PCE should be conducted by an authorized inspector or other credible regulator (e.g., an individual designated by the EPA or state/local/tribe/territory with sufficient knowledge, training, and experience to assess compliance).

(3) Investigations

An Investigation can be distinguished from the other two compliance monitoring types 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 type of compliance monitoring are the in-depth New Source Review/Prevention of Significant Deterioration (NSR/PSD) and New Source Performance Standards (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 NSR/PSD 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. These efforts resulted in significant enforcement actions protecting human health and the environment.

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).

VI. CLEAN AIR ACT COMPLIANCE AND ENFORCEMENT PROGRAM

CAA BASE PROGRAM COVERAGE

● Generally, the EPA base stationary source compliance and enforcement program encompasses air pollution problems for the following CAA programs:

- NSPS
- NESHAP
- MACT
- 40 CFR Part 63 Area Sources
- NSR/PSD
- State Implementation Plans (SIPs) and CAA §111(d) approved plans
- Title V Operating Permit
- Stratospheric Ozone Protection
- 42 USCA §7412(r) Prevention of Accidental Releases
- 40 CFR Part 98 Mandatory Greenhouse Gas Reporting Rule
- 42 USCA Section 7651 Acid Deposition Control

However, this policy does not include the specific CAA programs listed in Section IV.

EVALUATION FREQUENCIES:

● As stated above (Section IV), states/locals/tribes/territories 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 states/locals/tribes/territories 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/tribes/territories, 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 (see Section V), 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/tribes/territories 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).

● The above minimum evaluation frequencies are applicable to those Regions which have direct implementation of the CAA in Indian country and territories.

● When implementing the CAA base program and Agency policies outside of Indian country and territories, the Regions will continue to maintain expertise and a minimum level of activity consistent with the resources available; monitor the level and quality of effort by the states/locals/tribes/territories; 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 states/locals/tribes/territories. They also will monitor implementation of enforcement orders and consent decrees.

OECA NATIONAL ENFORCEMENT INITIATIVES

Background on Priority-Setting Process

● In collaboration with the states/locals/tribes/territories, EPA defines and selects national enforcement initiatives (NEIs) 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, there are currently several NEIs with an air program component. For additional information, please visit the EPA NEI website at

https://www.epa.gov/enforcement/national-enforcement-initiatives. 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.

Evaluation Frequencies

● In implementing the NEIs, EPA provides 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 states/locals/tribes/territories with respect to compliance evaluations associated with the NEIs. However, the Agency does encourage participation by the states/locals/tribes/territories in EPA compliance and enforcement activities within the NEIs. Participation in such activities may be considered as a factor when evaluating a proposed alternative CMS Plan submitted by an agency. (See Section VII.)

● In carrying out the NEIs, EPA will continue to share with the states/locals/tribes/territories the compliance monitoring and enforcement experience gained, the results achieved, and the lessons learned. While engaging with the states/locals/tribes/territories in capacity building efforts, the Agency also will share all major next generation advances. It is the EPA goal that modern, advanced approaches employed to change industry behavior and improve compliance will assist in transferring the work covered by the NEIs back to the CAA base program.

VII. ALTERNATIVES TO THE RECOMMENDED EVALUATION FREQUENCIES

● States/locals/tribes/territories 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); and
- Use of control equipment.

Programs of States/Locals/Tribes/Territories

- Identified deficiencies in the overall compliance monitoring program of a state/local/tribe/territory (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 timeframe for when such concerns/priorities will be addressed.
- Assistance provided to other states/locals/tribes/territories (e.g., leading multistate/local initiatives; lending expertise; training new inspectors).

EPA National Enforcement Initiatives
- Participation by a state/local/tribe/territory 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.

● For those Regions with direct implementation of the CAA in Indian country and territories, Headquarter approved alternative plans may be implemented and will be assessed using the same factors listed above.

VIII. ELEMENTS OF THE CMS PLAN

● CMS plans of the state/local/tribe/territory are a building block in the OECA 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/tribes/territories 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 negotiated document should provide confirmation of adherence with the CMS policy, serve as a suitable substitute for a separate CMS plan, and be reflected in ICIS-Air. If the negotiated document is serving as an alternative CMS plan, it is to be shared with Headquarters (Office of Compliance). (See Section VII.)

● The content of CMS plans will vary depending upon whether states/locals/tribes/territories develop and negotiate alternatives to the recommended evaluation frequencies.

● In those instances where states/locals/tribes/territories 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 ICIS-Air Programmatic ID) 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 ICIS-Air Programmatic ID) of all synthetic minor sources and a list of those facilities covered by the policy (SM-80s). 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/tribe/territory 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/tribes/territories propose alternatives to the recommended evaluation frequencies, states/locals/tribes/territories should provide a more detailed plan. In addition to the above elements, states/locals/tribes/territories 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/tribes/territories 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.

● As noted earlier, CMS plans for the Regions with direct implementation in Indian country and territories will be satisfied via the ACS process. If implementing an alternative plan, the Regions should provide similar information as listed above.

IX. COMPLIANCE MONITORING REPORTS

● CMRs may continue to be formatted as deemed appropriate. However, the following basic elements should be addressed in the reports:

(1) General information: date, compliance monitoring type (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, including documentation of observed deficiencies; 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/tribes/territories 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.

● CMRs 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.

● State/locals/tribes/territories should retain their CMRs in accordance with their respective agency policies, processes, and requirements. In the absence of any such directives, the following retention timeframes are recommended consistent with EPA records policy:

- CMRs documenting evaluations that do not lead to enforcement: 5 years.
- CMRs documenting evaluations that lead to a civil administrative enforcement action: 10 years after closure of the enforcement file.
- CMRs documenting evaluations that lead to a civil judicial or criminal enforcement action: 20 years after closure of the enforcement file.

● Example CMRs documenting FCEs are posted for review by states/locals/tribes/territories on the EPA Enforcement and Compliance History Online (ECHO) website at: https://echo.epa.gov/srf_comp_mon_reports

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

● To collect compliance information in a consistent format that allows EPA to evaluate and compare compliance monitoring programs, Regions and states/locals/tribes/territories will need to:

- Continue to maintain records of compliance monitoring activities, and enter facility-specific compliance and enforcement data in ICIS-Air on a routine basis. In accordance with the Source Compliance and State Action Reporting Information Collection Request (ICR), all data (except for stack test date and results, as noted below) is to be reported within 60 days.

- Any applicable source that begins operations is to be reported into ICIS-Air and given a CMS indicator and appropriate frequency flag. Those CMS facilities that have been permanently shut down are to have their CMS flags removed so they will not show as “active on CMS plan” in ICIS-Air.

- If a state/local/tribe/territory 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 Minimum Data Requirements (MDRs) are to be reported to ICIS-Air for all sources in the alternative plan.

- Report "Federally Reportable Violations" (FRVs) and "High Priority Violations" (HPVs) in accordance with current EPA policies.

- Utilize the following compliance monitoring types to report activities at the facility level in ICIS-Air:
    - Full Compliance Evaluations
    - Partial Compliance Evaluations
    - Investigations

- FCEs are to be reported into ICIS-Air as either on-site or off-site. Off-site FCEs are to be reported only when states/locals/tribes/territories 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. (See Section V.)

- Although PCEs are to be reported by the Regions, they generally are not an MDR for states/locals/tribes/territories and reporting of these actions is voluntary. A PCE becomes an MDR for states/locals/tribes/territories when the PCE is part of an alternative plan and/or when the PCE leads to discovery of an HPV. States/locals/tribes/territories may wish to report PCEs to capture the full range of their compliance monitoring activities.

- To assist in PCE reporting, the following specific PCE activities may be reported into ICIS-Air:
    - Off-site PCE
    - On-site PCE
    - On-site Record/Report Review
    - On-site Monitoring/Sampling
    - On-site Interview
    - On-site Fenceline/Ambient Monitoring
    - On-site Visible Emission Observation
    - On-site CEMS/CMS Audit
    - On-site Stack Test
    - Title V Annual Compliance Certification Review

- Report the following information for all Title V annual compliance certification reviews in ICIS-Air:
    - date due;
    - date received;

- whether deviations were reported by the facility;
- date reviewed; and
- results (i.e., violations)

- Please note: Regions shall enter the first three data elements for each Title V compliance certification unless otherwise negotiated with states/locals/tribes/territories.

- Enter the date and results of all stack tests in ICIS-Air within 120 days of completion of the test.

● The CMS status in ICIS-Air will automatically change to "overdue" 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.

● Standard CMS reports are available in ICIS-Air for retrieving, reviewing, and analyzing the quality of the CMS reported data (e.g., *CMS Report*, *FCE Coverage at Majors Report*, *FCE Coverage at 80% SMs Report*, and *Total Number of State-Local CAA FCEs by CMS Source Category*). These reports provide access to detailed facility-specific information such as source classification, operating status, the last Full Compliance Evaluation (FCE) reported, and the CMS status (which indicates whether a facility included in a CMS plan is overdue for an FCE). The Regions and delegated agencies should review the data provided in these reports as part of the regular communications to discuss data quality issues.

● 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/tribal-specific contributions to commitments.

● Only the Regions are required to establish ACS commitments for the OECA CAA national enforcement initiatives. These ACS commitments do not apply to the state/local/tribal agencies.

● EPA developed ICIS-Air to accommodate the above reporting for program management and oversight. The Agency also designed ICIS-Air with the capabilities to improve data analysis and information in the future. Efforts are continuing to advance Next Generation Compliance and modernize our approach to environmental protection to make reporting easier. For example, EPA is engaged in ongoing efforts with the states/locals/tribes through the E-Enterprise initiative to facilitate increased electronic reporting in order to have more accurate, complete and timely information while minimizing reporting burden.

XI. EVALUATION/OVERSIGHT

● The primary reason for revising CMS in 2001 was to address deficiencies identified by the EPA Inspector General 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/tribes/territories 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 assisted by data reported to ICIS-Air. 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-program effort developed in collaboration with the Environmental Council of the States and NACAA (as well as other state media associations) to evaluate performance in the air, water, and hazardous waste compliance and enforcement programs. It is built upon a common set of data metrics, which are verified and reviewed annually and provide a summary of trends and past year performance of state activities in comparison to overall program goals, national averages, and data entry requirements. There are five nationally consistent review elements: Data, Inspections/Evaluations, Violations, Enforcement, and Penalties. The SRF provides a useful building block upon which to analyze the effectiveness of compliance and enforcement programs. This baseline analysis is based on media-specific guidance such as the CMS for the air program. While CMS provides the national performance expectations for the delegated agencies, the SRF is the instrument used to consistently assess their performance.

The CAA SRF reviews will enable Regions to evaluate whether:

- States/locals/tribes/territories conduct and accurately report FCEs, and that such reported evaluations meet the definition of an FCE as provided in Section V above.

- States/locals/tribes/territories identify and document violations and provide sufficient documentation to determine whether violations meet the definition of an FRV and/or HPV.

- State/locals/tribes/territories fully report compliance monitoring/enforcement activities and outcomes in ICIS-Air 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, guidance and documentation is available at: https://echo.epa.gov/srf_help

- 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 initiatives. To the extent possible, Headquarters will inform Regions in advance of the criteria that will be used in evaluating Regional programs.