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Office of Enforcement and Compliance Assurance

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The Yellow Book:

Guide to Environmental Enforcement and Compliance at Federal Facilities

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In addition, updates to the document will be available on-line.

Acknowledgment

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Limitations of this Document

This document is written to serve as a basic reference. Due to the rapidly changing area of environmental law, the reader is advised to consult the current version of the relevant statute or regulation for the most accurate information. Where the actual text of a statute, regulation, executive order, policy, guidance or other document differs from the description of such documents contained in this document, the actual text of the statute, regulation, executive order, policy, guidance or other document should be followed. This document does not constitute rule making by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this document and its internal implementation procedures.

Reserved for letter from
Steve Herman

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LIST OF ACRONYMS AND ABBREVIATIONS

ACE	Agriculture in Concert with the Environment
ACM	Asbestos-Containing Material
ACP	Area Contingency Plan
AEA	Atomic Energy Act
AFS	AIRS Facility Subsystem
AHERA	Asbestos Hazard Emergency Response Act
AIEO	American Indian Environmental Office
AILESP	American Indian Lands Environment Support Project
AIRS	Aerometric Information Retrieval System
ALJ	Administrative Law Judge
AO	Administrative Order
ARAR	Applicable, Relevant, and Appropriate Requirements
ATSDR	Agency for Toxic Substances and Disease Registry
BACT	Best Available Control Technology
BCP	BRAC Cleanup Plan
BCT	BRAC Cleanup Teams
BEC	BRAC Environmental Coordinator
BIA	Bureau of Indian Affairs
BRAC	Base Closure and Realignment Act
BTC	Base Transition Coordinator
CAA	Clean Air Act
CAAA	Clean Air Act Amendments
CEMP	Code of Environmental Management Principles
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CERFA	Community Environmental Response Facilitation Act
CERI	Center for Environmental Research Information
CFA	Civilian Federal Agencies
CFC(s)	Chlorofluorocarbon(s)
CFR	Code of Federal Regulations

LIST OF ACRONYMS AND ABBREVIATIONS (continued)

CMS	Compliance Monitoring Strategy
CNMI	Commonwealth of the North Mariana Islands
COCO	Contractor-Owned/Contractor-Operated
COCO(E)	Contractor-Owned/Contractor-Operated (equipment)
CORR	Chemicals on Reporting Rules
CPEO	Center for Public Environmental Oversight
CRP	Child-Resistant Packaging
CTC	Control Technology Center
CWA	Clean Water Act
DFO	Designated Federal Official
DOC	Department of Commerce
DOCKET	Federal Agency Hazardous Waste Compliance Docket
DoD	Department of Defense
DOE	Department of Energy
DOI	Department of Interior
DOIT	Develop On-Site Innovative Technologies
DOJ	Department of Justice
DOT	Department of Transportation
D&R	Demolition and Renovation
DSE	Domestic Sewage Exclusion
EA	Environmental Assessment
EC	Environmental Concerns
EER	Excess Emission Reporting
EHS	Extremely Hazardous Substance
EIS	Environmental Impact Statement
EMR	Environmental Management Review
EMS	Environmental Management System
EO	Environmental Objections
E.O.	Executive Order
EPA	Energy Policy Act
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
ERP	Enforcement Response Policy
ESA	Endangered Species Act

LIST OF ACRONYMS AND ABBREVIATIONS (continued)

ETI	Environmental Technology Initiative
EU	Environmentally Unsatisfactory
FACA	Federal Advisory Committee Act
FEDPLAN	Federal Agency Environmental Management Program Planning
FEDPLAN-PC	Federal Agency Environmental Management Program Planning Process Database
FEMA	Federal Emergency Management Agency
FFC	Federal Facility Coordinator
FFCA	Federal Facility Compliance Act
FFEJEI	Federal Facilities Environmental Justice Enforcement Initiative
FFEO	Federal Facilities Enforcement Office
FFERDC	Federal Facilities Environmental Restoration Dialogue Committee
FFID	Federal Facility Identification Number
FFLC	Federal Facility Leadership Council
FFLEX	Federal Facilities Leadership Exchange
FFRRO	Federal Facilities Restoration and Reuse Office
FFTS	Federal Facilities Tracking System
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
FINDS	Facility Index System
FMECI	Federal Facilities Multimedia Enforcement/Compliance Initiative
FMECP	Federal Facilities Multimedia Enforcement Compliance Program
FONSI	Finding of No Significant Impact
FOSL	Finding of Suitability to Lease
FOST	Finding of Suitability to Transfer
FOTW	Federally-Owned Treatment Works
FR	Federal Register
FUDS	Formerly Used Defense Sites
FY	Fiscal Year
GACT	Generally Available Control Technology
GAP	General Assistance Program
GAP	Government Agency Plan
GLP	Good Laboratory Practices
GOCO	Government-Owned/Contractor-Operated
GOGO	Government-Owned/Government-Operated

LIST OF ACRONYMS AND ABBREVIATIONS (continued)

GOPO	Government-Owned/Privately-Operated
GPO	Government Printing Office
GSA	General Services Administration
HAP	Hazardous Air Pollutant
HMTA	Hazardous Materials Transportation Act
HSWA	Hazardous and Solid Waste Amendments
IAG	Interagency Agreement
ID	Identification Number
IDEA	Integrated Data for Enforcement Analysis
IFC	Inspection Frequency Guidance
IPM	Integrated Pest Management
IPPTF	Interagency Pollution Prevention Task Force
IRC	Information Resources Center
ISO	International Organization for Standardization
JOCO	Jointly-Owned/Contractor-Operated
LAER	Lowest Achievable Emission Rate
LCR	Lead and Copper Rule
LDR	Land Disposal Restrictions
LEPC	Local Emergency Planning Committee
LO	Lack of Objection
LRA	Local Redevelopment Authority
MACT	Maximum Available Control Technology
MCL	Maximum Contaminant Level
MCLG	Maximum Contaminant Level Goal
MI	Mechanical Integrity
MICE	Methods Information Communications Exchange
MIT	Mechanical Integrity Test
MMPA	Marine Mammal Protection Act
M/R	Monitoring and Reporting
MSDS	Material Safety Data Sheet
MSWLF	Municipal Solid Waste Landfill
NAAQS	National Ambient Air Quality Standards
NCA	Noise Control Act
NCDB	National Compliance Database

LIST OF ACRONYMS AND ABBREVIATIONS (continued)

NCEPI	National Center for Environmental Publications and Information
NCIC	Non-Confidential Information Center
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NCP	National Contingency Plan
NEIC	National Enforcement Investigations Center
NEJAC	National Environmental Justice Advisory Council
NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollutants
NETI	National Enforcement Training Institute
NFIP	National Flood Insurance Program
NHPA	National Historical Preservation Act
NOAA	National Oceanographic and Atmospheric Administration
NON	Notice of Noncompliance
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
NRC	National Response Center
NRC	Nuclear Regulatory Commission
NSPS	New Source Performance Standards
NTIS	National Technical Information Service
O&M	Operation and Maintenance
ODS	Ozone Depleting Substance
OECA	Office of Enforcement and Compliance Assurance
OEJ	Office of Environmental Justice
OFA	Office of Federal Activities
OLC	Office of Legal Counsel
OMB	Office of Management and Budget
OPA	Oil Pollution Act
OPP	Office of Pesticide Programs
OSHA	Occupational Safety and Health Act
OSRE	Office of Site Remediation Enforcement
OSW	Office of Solid Waste
OSWER	Office of Solid Waste and Emergency Response
P2	Pollution Prevention

LIST OF ACRONYMS AND ABBREVIATIONS (continued)

PA	Preliminary Assessment
PAIR	Preliminary Assessment Information Reporting
Pb	Lead
PCB	Polychlorinated Biphenyls
PCS	Permit Compliance System
PIES	Pollution Prevention Information Exchange System
POGO	Privately-Owned/Government-Operated
POTW	Publicly-Owned Treatment Works
PPA	Pollution Prevention Act
PPCS	Planning, Prevention, and Compliance Staff
PPIC	Pollution Prevention Information Clearinghouse
PPOA	Pollution Prevention Opportunity Assessments
PRP	Potentially Responsible Party
PSD	Prevention of Significant Deterioration
PWS	Public Water System
PWSS	Public Water Supply System
RAB	Restoration Advisory Board
RAC	Response Action Contract
RACT	Reasonably Available Control Technology
RCRA	Resource Conservation and Recovery Act
RCRIS	Resource Conservation and Recovery Act Information System
RDRA	Remedial Design/Remedial Action
RECAP	Reporting for Enforcement and Compliance Assurance Priorities
RIC	RCRA Docket Information Center
RI/FS	Remedial Investigation/Feasibility Study
RISC	Air Risk Information Support Center
ROD	Record of Decision
RQ	Reportable Quantity
RRT	Regional Response Team
SARA	Superfund Amendments and Reauthorization Act
SDWA	Safe Drinking Water Act
SDWIS	Safe Drinking Water Information System
SEP	Supplemental Environmental Project
SERC	State Emergency Response Commission

LIST OF ACRONYMS AND ABBREVIATIONS (continued)

SHPO	State Historic Preservation Office
SIC	Standard Industrial Classification
SIP	State Implementation Plan
SNC	Significant Noncomplier
SPCC	Spill Prevention, Control, and Countermeasures
SRES	Site Remediation and Enforcement Staff
SSAB	Site-Specific Advisory Board
STP	Site Treatment Plan
SWDA	Solid Waste Disposal Act
SWMU	Solid Waste Management Units
SWTR	Surface Water Treatment Rule
TCR	Total Coliform Rule
TEA	Tribal EPA Environmental Agreement
THM	Trihalomethane
TPQ	Threshold Planning Quantity
TRI	Toxic Chemical Release Inventory
TRI-US	Toxic Release Inventory User Support
TRIS	Toxic Release Inventory System
TSCA	Toxic Substances Control Act
TSDF	Treatment, Storage, and Disposal Facility
TTN	Technology Transfer Network
UIC	Underground Injection Control
U.S.C.	U.S. Code
USCG	U.S. Coast Guard
USDA	U.S. Department of Agriculture
USDW	Underground Source of Drinking Water
UST	Underground Storage Tank
VOC	Volatile Organic Compound
WPS	Worker Protection Standards

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PREFACE

America's last 25 years of improving contaminated environments are attributable to a set of environmental laws and implementation criteria that insist on compliance with those laws. Preserving and building on those improvements and successfully addressing a new generation of environmental problems will require the combined and sustained efforts of all levels of government, regulated entities (both public and private), and the public. The U.S. Environmental Protection Agency (EPA) has relied on a strong, aggressive enforcement program as the centerpiece of its efforts to ensure compliance with national environmental laws. This approach has served the nation well and has created a culture of environmental compliance that is unsurpassed in the world.

Federal agencies, just like private parties, are required to comply with all environmental requirements: Federal, State,[1] Tribal, and local. Increasingly, Federal agencies have been developing sound environmental management programs that will ensure long-term compliance with environmental requirements. Moreover, agency-based environmental management programs are expected to include pollution prevention and waste minimization goals and plans for expeditiously cleaning up hazardous and radioactive waste sites. Indeed, partially in response to EPA's compliance and enforcement efforts, a professional class of Federal facility environmental managers has emerged—one that manages people and systems oriented toward compliance and pollution prevention as opposed to "end-of-pipe" solutions.

EPA believes that Federal facility compliance with pollution control regulations should equal or surpass the rest of the regulated community and that Federal facilities should lead the way in minimizing environmental contamination and impacts to public health. Over the last decade, the role of Federal facilities in pollution control and abatement has been scrutinized by Congress, the public, and the media. In response, Congress has modified existing laws and enacted new ones to clarify that Federal agencies must comply with environmental requirements. Pollution prevention has become a national priority and, increasingly, a central ethic in many environmental programs. Internationally, other countries study U.S. environmental programs to gather information that may be useful to their own environmental programs.

Perhaps the most groundbreaking of the new laws affecting Federal facilities is the Federal Facility Compliance Act, which requires that Federal facilities comply with all applicable Federal, State, interstate, and local solid and hazardous waste requirements. The law provides EPA and States with authority to assess fines and penalties against Federal facilities under the Resource Conservation and Recovery Act. Also, EPA and States gained significant new Federal facility enforcement authorities as a result of the 1996 Safe Drinking Water Act reauthorization. In addition, a July 1997 Department of Justice decision concluded that EPA may assess civil penalties against Federal facilities for violations of the Clean Air Act.

[1]For purposes of this document, when "State" is referred to, it includes American Samoa, Guam, Commonwealth of North Mariana Islands (CNMI), and other Pacific Insular Areas.

E.O. 12088
The head of each Federal agency is responsible for ensuring that the agency's facilities, programs, and activities meet Federal, State, and local environmental requirements.

Federal agencies are subject to the requirements of several Executive Orders (E.O.s) that address environmental issues. For example, E.O. 12088, *Federal Compliance with Pollution Control Standards*, requires Federal agencies to develop and maintain plans for controlling environmental pollution. E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*, requires Federal agencies to practice pollution prevention by developing agency strategies and facility plans that promote waste-stream source reduction. E.O. 12856 also requires Federal agencies to comply with the Emergency Planning and Community Right-to-Know Act of 1986 and the Pollution Prevention Act of 1990. A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*; E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; E.O. 12969, *Federal Acquisition*; *Community Right-to-Know*; *Toxic Chemical Release Reporting*; and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.

Today, EPA applies a full range of approaches to motivate compliance and promote pollution prevention. EPA's Federal Facilities Enforcement Office (FFEO) is responsible for ensuring that Federal facilities take all necessary actions to prevent, control, and abate environmental pollution. FFEO is part of the Office of Enforcement and Compliance Assurance and coordinates EPA's Federal facility enforcement, compliance assurance, and assistance efforts. EPA's Federal facilities enforcement program has a sector orientation, uses strong enforcement combined with compliance assistance, and promotes pollution prevention and multimedia enforcement to ensure that Federal agencies and government-owned/contractor-operated facilities comply with all applicable environmental statutes and regulations. FFEO uses a comprehensive approach encompassing compliance assistance, compliance oversight and enforcement, and systematic reviews of Federal agency environmental plans and programs to ensure that Federal agencies are in compliance and are taking steps toward pollution prevention.

FFEO has either a lead or consultive role in communicating with Congress, other Federal agencies, States, and public stakeholders on Federal facility environmental enforcement and compliance matters. Regional Federal Facility Coordinators (FFCs) serve as a link between EPA, Federal installations, and the public (including State, Tribal, and local governments) and are responsible for coordinating the implementation of EPA's enforcement, compliance, and outreach activities involving Federal facilities. FFCs are the primary points-of-contact for Federal facility environmental managers.

To overcome the difficulties posed by contamination at Federal facilities, the Federal Facilities Restoration and Reuse Office (FFRRO) works with the Department of Defense, the Department of Energy, and other Federal entities to help them develop creative, cost-effective solutions to their

environmental problems. FFRRO's overall mission is to facilitate faster, more effective, and less costly cleanup and reuse of Federal facilities.

Formed in 1994, FFRRO functions with the following specific goals in mind:

< Protect human health and the environment at and near Federal facilities, while also minimizing the expenditure of taxpayer dollars;

< Rebuild local communities while protecting human health and the environment;

< Enhance the cleanup process; and

< Ensure effective stakeholder involvement at Federal facilities by putting citizens first.

In support of these goals, FFRRO is responsible for activities that support policy development and implementation, outreach and training, stakeholder participation, and interagency coordination.

The Yellow Book: Guide to Environmental Enforcement and Compliance at Federal Facilities (hereinafter referred to as the "Yellow Book") has been written to meet the needs of a diverse audience. The Yellow Book's primary purpose is to provide individuals with Federal facility environmental responsibilities with an informational tool to help comply with environmental requirements and to clearly explain the compliance and enforcement processes used by EPA and States at Federal facilities.

The Yellow Book is designed to function as a user-friendly guide that contains useful and easily accessed information and as a resource for obtaining additional information on specific environmental issues. It is not intended to ensure compliance with all regulations.

The following is a brief overview of the topics covered in the Yellow Book.

< *Chapter I - Identifying Federal Facilities and Tracking Federal Facility Compliance*: This chapter defines Federal facilities, describes the different types of Federal facilities, and identifies how EPA tracks Federal facility activity. It provides answers to the following questions: What is a Federal facility? How are Federal facilities identified and tracked?

< *Chapter II - Environmental Statutes and Executive Orders*: This chapter summarizes key provisions of environmental statutes and executive orders with which Federal facilities must comply. It addresses the need for Federal facilities to comply not only with Federal environmental requirements, but also with those of State, Tribal, and local governments. In addition, several other laws affecting Federal facilities (e.g., the Base Closure and Realignment Act) are discussed.

< *Chapter III - Crosscutting Environmental Issues*: This chapter discusses several crosscutting environmental issues that affect Federal facilities. Included is a discussion of pollution prevention, Federal government environmental awards and challenge programs,

environmental justice, American Indian Tribes, innovative technology, Federal Facilities Environmental Restoration Dialogue Committee, formerly used defense sites, and environmentally beneficial landscaping requirements.

< *Chapter IV - Monitoring Federal Facility Compliance*: Chapter IV discusses why and how EPA, States, and Tribes monitor Federal facility activities. It includes a discussion of the goals and objectives of EPA's Federal facility compliance program and identifies the tools frequently employed to monitor Federal agency compliance. Specific topics discussed in Chapter IV include coordination between EPA Regions and the States on Federal facility compliance; the reporting and recordkeeping activities that are required of Federal facilities; the Code of Environmental Management Principles; Environmental Management Systems; inspections of Federal facilities by EPA, States, and/or Tribes; audits conducted by the facilities themselves; and Federal Agency Environmental Management Program Planning, commonly referred to as FEDPLAN.

< *Chapter V - Enforcement Response to Federal Facility Violations*: Chapter V discusses EPA's Federal facility enforcement philosophy, summarizes key enforcement policies affecting Federal facilities, and provides an overview of enforcement authorities and the enforcement process. Also discussed is EPA's response to violations at Federal facilities operated by non-Federal parties (e.g., government-owned/contractor-operated facilities) and State/Tribal response to Federal facility violations. A chart depicting the EPA Federal facilities enforcement process is provided. In addition, an exhibit is presented that provides definitions for significant violators and significant noncompliers of environmental requirements.

< *Chapter VI - Compliance Assistance, Training, and Outreach*: This chapter discusses EPA's role in providing compliance assistance to Federal facilities. Included in the discussion are training opportunities, available hotlines, and access to EPA publications.

< *Chapter VII - EPA Offices With Major Federal Facility Responsibilities*: Chapter VII provides an overview of the major organizations and groups within EPA that are directly involved in activities affecting Federal facilities. The chapter discusses the roles and responsibilities of the Federal Facilities Enforcement Office, Federal Facilities Restoration and Reuse Office, Office of Site Remediation Enforcement, Office of Federal Activities, Federal Facilities Leadership Council, and Regional Federal Facility Coordinators.

I. IDENTIFYING FEDERAL FACILITIES AND TRACKING FEDERAL FACILITY COMPLIANCE

This chapter defines Federal facilities, describes the different types of Federal facilities, and identifies how EPA tracks Federal facility activity. It provides answers to the following questions: What is a Federal facility? How are Federal facilities identified and tracked?

A. FEDERAL FACILITIES

1. Definition and Number of Federal Facilities

Federal facilities are defined as the "buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal government." There are approximately 15,000 Federal facilities that exist in EPA databases and are subject to environmental compliance under various program requirements. Some types of activities that subject Federal facilities to environmental requirements include construction, facility and laboratory operation, materials' storage and shipment, and vehicle fleet management. Moreover, many Department of Energy (DOE) and Department of Defense (DoD) activities involve large-scale manufacturing of an industrial nature. Some DoD installations are the equivalent of small cities that may include hospitals, sewage treatment plants, roads, and airports.

All Federal agencies, whether civilian Federal agencies, DoD, or DOE, face environmental compliance issues. For example, there are more than 2,500 Federal Resource Conservation and Recovery Act (RCRA)-regulated facilities, approximately 4,300 Federal Safe Drinking Water Act (SDWA)-regulated facilities, and nearly 500 Federal facilities with Clean Air Act (CAA) and National Pollution Discharge Elimination System (NPDES) permits. For fiscal year (FY) 1997, Federal agencies requested nearly $4.5 billion to fund 11,820 environmental cleanup projects.

2. Types of Facilities

The traditional type of Federal facility is the government-owned/government-operated (GOGO) facility. The second most common type of Federal facility is the government-owned/contractor-operated (GOCO) facility, where the government owns the facility and a contractor manages all regular activities. There are numerous Federal facilities that have some level of private party involvement at the facility. For example, the Federal government may lease private buildings or space for its operations, or a private company may manage all or portions of a facility owned by a Federal agency. DOE has numerous GOCO sites.

Table I-1, on the following page, identifies and defines the various types of Federal facilities and identifies how each type of facility is classified for information tracking purposes. Most types of Federal facilities listed in Table I-1 are identified in agency information systems as Federal facilities.

The primary exceptions to this are contractor-owned/contractor-operated (COCO) and contractor-owner/contractor-operated equipment (COCO(E)) facilities, which are tracked as private parties.

Although American Indian lands do not fall within EPA's definition of a Federal facility, Federal facilities located on American Indian lands are required to meet all applicable environmental requirements. However, environmental regulation of Federal activities on American Indian lands raises special compliance and enforcement issues. Tribal governments, by virtue of their inherent sovereignty, can exercise jurisdiction to regulate their own affairs as well as activities occurring within their territory. For more information on American Indian Tribes, see the enforcement sections of the environmental statutes contained in Chapter II and the discussion of American Indian Tribes in Section D of Chapter III.

Federal agencies that are constructing or operating facilities outside the United States are required by Executive Order (E.O.) 12088, *Federal Compliance with Pollution Control Standards,* to ensure that such construction and operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction. The E.O. 12088 requirement that Federal agencies develop and submit environmental plans to EPA applies equally to an agency's domestic and overseas activities. Thus, Federal agencies must report both their domestic and overseas activities under the Federal Agency Environmental Management Program Planning process, commonly referred to as FEDPLAN. In addition to environmental requirements of the host country or jurisdiction, Federal agencies with facilities overseas may be required to adhere to certain environmental requirements of the United States. Applicable environmental requirements are often determined by executive orders, U.S. domestic and host-nation environmental standards, U.S. agency policy, and international agreements. E.O. 12114, *Environmental Effects Abroad of Major Federal Actions*, for example, directs Federal agencies to consider the environmental impacts of Federal decisionmaking overseas. A summary of E.O. 12114 is provided in Section D.8 of Chapter II and a discussion of FEDPLAN is provided in Section H of Chapter IV.

Table I-1: Types of Federal Facilities

FACILITY TYPE	DEFINITION	TRACKING CLASSIFICATION
GOGO	Government-owned/government-operated facility where the government owns and operates all regulated activity.	Federal
GOCO	Government-owned/contractor-operated facility owned by a Federal agency, but operated in whole or part by private contractor(s).	Federal
GOPO	Government-owned/privately-operated facility where the government has leased all or part of its facility to a private operator for its operation and profit.	Federal
COCO	Contractor owned/contractor operated facility that provides goods and/or services to a Federal agency under contract.	Private
COCO(E)	Same as COCO. However, the contractor may be furnished government equipment to manufacture a product or provide a service.	Private

Table I-1: Types of Federal Facilities (continued)

FACILITY TYPE	DEFINITION	TRACKING CLASSIFICATION
POGO	Privately-owned/government-operated facility where the government leases buildings or space for its operations.	Federal where an agency occupies all or most of the building space
FUDS	Formerly used defense sites. Sites may or may not be presently owned by a Federal agency. However, the Federal agency is responsible for hazardous waste cleanup as a result of previous operations.	Federal
Leasee	Parties granted use of government land by a rental or real estate agreement or title transfer with a reversionary clause (e.g., municipal landfills, oil and gas, mining).	Federal
Grantee	Parties have received a grant for permanent authorization to use a given right-of-way. Grants usually involve a single payment for the land or transfer of land use rights.	Private
Claimant	Parties having properly located, recorded, and maintained mining claims under the 1872 Mining Law on Federal lands for which a patent has not been issued.	Federal when available for entry under 1872 Mining Law
Patent Holder	A mining claimant who has met the statutory requirements of the 1872 Mining Law and has been issued a permit.	Private
Permittee	Parties granted a permit for short-term use of government land.	Federal
Withdrawal from Public Use	Permit granted to a Federal agency or instrument of the Federal government to use land of another Federal agency for up to 20 years administratively if the intended use does not involve destruction of the land (i.e., military uses, dams).	Federal

B. IDENTIFYING AND TRACKING FEDERAL FACILITIES

EPA uses a variety of tracking systems to identify and track Federal facilities. As described below, several tracking systems give EPA the ability to gather compliance and enforcement information on individual facilities of the Federal government. The Federal Facility Identification (FFID) number is common to these tracking systems. FFID numbers provide a common element between tracking systems by supplying a single identification number used in all EPA tracking systems. Federal agencies are encouraged to notify EPA if there is a change in the facility's FFID number(s). Maintaining accurate FFID numbers will enhance EPA's ability to assist Federal agencies with prioritizing, managing, and tracking their environmental projects.

1. FFID Numbers

The FFID number allows site staff, project managers, and database operators to track activities at Federal facilities. FFID numbers are used in numerous EPA databases such as the Federal Agency Environmental Management Program Planning Process Database (FEDPLAN-PC), Integrated Data for Enforcement Analysis (IDEAWIN), Federal Facilities Tracking System (FFTS), Facility Index System (FINDS), and the Toxic Release Inventory System (TRIS) database. FFID numbers are a combination of two letters and nine or ten digits used to identify Federal facilities. Each Federal facility has a unique FFID number used in all Federal facility information systems. A nine-digit code is used for most databases, while the ten-digit code used by the FINDS database has a numeric check character. FFID numbers consist of three separate elements: a State code, an agency/bureau code, and a General Services Administration (GSA) installation number. Each element is discussed in more detail in Exhibit I-1, below. To obtain the GSA installation number for individual facilities and the correct agency and bureau code for a facility, contact the Office of Government Wide Real Property Policy within the Public Building Service of the GSA, at (202) 219-0077, or contact an EPA Federal Facility Coordinator (FFC).

Exhibit I-1: Federal Facility Identification Numbers

FEDERAL FACILITY IDENTIFICATION (FFID) NUMBERS AT A GLANCE

An FFID number consists of three separate elements: the State code, an agency/bureau code, and the GSA installation number.

AL	-	1 2 3 4	5 6 7 8 9
State Code	Hyphen	Agency/ Bureau Code	GSA Installation Number

State Code: The State code is a two-character code for the State in which the program is located. Note: This is the same as the State code used when mailing a letter.

Hyphen: In standard FFID numbers, a hyphen is used to separate the State code and the agency/bureau code. In FINDS, a numeric check character is used instead of a hyphen.

Agency/ Bureau Code: The agency/bureau code is a four-digit code assigned to the Federal organization responsible for the project. The first two digits are the agency code, and the second two are the bureau code. Agencies that do not use bureau codes are represented by zeros (e.g., AL-120056789). For DoD, the bureau code represents the major command or other major organization.

GSA Installation Number: This five-digit code identifies where funds are expended for land, buildings, and similar structures and facilities. This number is available from the Office of Government Wide Real Property within the Public Building Service of the GSA, or from the EPA Regional FFC.

2. Information Systems Used to Track Federal Facilities

EPA uses two systems to track Federal facilities: FFTS and FEDPLAN-PC. FFTS provides an integrated multimedia approach for tracking Federal facilities by extracting compliance information from the IDEA mainframe system, which consolidates information from EPA's various media-specific databases. This information includes facility location, points-of-contact, status information, permits, cleanup activities, inspections, and enforcement activities. In the future, FFTS may be superseded by the PC version of IDEA called IDEAWIN.

IDEA draws information from 16 databases, including the following media-specific databases: FINDS, Resource Conservation and Recovery Act Information System (RCRIS), Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), Federal Agency Hazardous Waste Compliance Docket (DOCKET), TRIS, Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS), National Compliance Database (NCDB), Permit Compliance System (PCS), and Safe Drinking Water Information System (SDWIS). These media-specific databases are described in Table I-2 below, and on the following page.

Table I-2: Media-Specific Databases From Which FFTS/IDEA Draws Information

SYSTEM NAME	MEDIA	SYSTEM DESCRIPTION
FINDS - Facility Index System	Multi-media	Contains information on facilities regulated or tracked by EPA programs and refers users to systems holding more detailed data.
RCRIS - Resource Conservation and Recovery Act Information System	RCRA	Contains information on facilities managing hazardous waste (e.g., handler identification, permit applications, compliance monitoring, and corrective action information).
CERCLIS - Comprehensive Environmental Response, Compensation, and Liability Information System	CERCLA	Contains information on all uncontrolled hazardous substance sites in the United States and its territories known to EPA, including site identification data, program descriptions, financial information, and plans to address environmental contamination.
DOCKET - Federal Agency Hazardous Waste Compliance Docket	CERCLA	Contains information on all civil judicial enforcement activity including case information, facility information, defendant information, and some administrative enforcement cases.

Table I-2: Media-Specific Databases From Which FFTS/IDEA Draws Information (continued)

SYSTEM NAME	MEDIA	SYSTEM DESCRIPTION
TRIS - Toxic Release Inventory System	EPCRA	Contains information on approximately 600 listed toxic chemicals that the facilities release directly to air, water, or land, or transport off site.
AFS - AIRS Facility Subsystem	CAA	Contains emission and compliance data on air pollution point sources.
NCDB - National Compliance Database	FIFRA/ TSCA	Contains compliance and enforcement data collected for FIFRA and TSCA.
PCS - Permit Compliance System	NPDES	Tracks the permit, compliance, and enforcement status of NPDES facilities.
SDWIS - Safe Drinking Water Information System	SDWA	Supports the Public Water Supply System Program. SDWIS contains inventory, violation, and enforcement information on approximately 200,000 public water systems.

FEDPLAN-PC contains an inventory of all Federal environmental projects and activities reported to EPA by Federal agencies through the Federal Agency Environmental Management Program Planning (FEDPLAN) process (formerly known as the Office of Management and Budget (OMB) Circular A-106 process). The FEDPLAN-PC database provides information on individual projects and programs planned to:

< Bring facilities into compliance;

< Maintain compliance with current regulations; or

< Achieve compliance with future regulations.

FEDPLAN-PC supports the FEDPLAN process by providing easy access to the following information:

< Reason for initiating a project;

< Problems the project is designed to correct;

< Environmental impact of the project;

< Compliance status of the facility;

< Priority assigned to the project; and

< Estimated cost of the project.

When used with other EPA compliance and enforcement databases (such as FFTS), FEDPLAN-PC is an important mechanism for tracking, monitoring, and evaluating environmental projects. Together, FEDPLAN-PC and FFTS give EPA a comprehensive information source tailored to the needs of the Federal facilities compliance and enforcement program.

For an in-depth discussion of FEDPLAN and FEDPLAN-PC, see Chapter IV, Section H. Chapter IV discusses the FEDPLAN process and authorities, FEDPLAN-PC as a management information system, reporting FEDPLAN data, and EPA review of agency submissions.

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II. ENVIRONMENTAL STATUTES AND EXECUTIVE ORDERS

This chapter summarizes key provisions of environmental statutes and executive orders with which Federal facilities must comply. It addresses the need for Federal facilities to comply not only with Federal environmental requirements, but also with those of State, Tribal, and local governments. In addition, several other laws affecting Federal facilities (e.g., the Base Closure and Realignment Act) are discussed.

A. STATE, TRIBAL, AND LOCAL REQUIREMENTS

Although most statutes allow limited Presidential exemptions, Federal agencies generally must comply with all Federal environmental statutes and regulations plus all applicable State, Tribal, and local requirements. Federal facility managers, therefore, must incorporate State, Tribal, and local environmental requirements into their environmental compliance and auditing programs. When State, Tribal, and local regulations are more stringent than EPA requirements, Federal agencies are generally required to comply with the more stringent requirements. To ensure compliance with more stringent requirements, Federal facilities need to consult and cooperate with State, Tribal, and local governments. Executive Order (E.O.) 12088, *Federal Compliance with Pollution Control Standards*, requires that Federal agencies develop and maintain plans for controlling environmental pollution and that Federal agencies fully cooperate with EPA, State, interstate, and local agencies to prevent, control, and abate environmental pollution. E.O. 12088 requirements are summarized in Chapter II, Section D. A copy of E.O. 12088 is contained in Appendix C.

American Indian Tribes, like States, can be delegated/authorized to manage Federal environmental programs. The definition of the terms "delegated" and "authorized" is statute-specific. A general definition of the terms "delegated" and "authorized" is provided in the adjacent box. Therefore, each statute should be referred to for precise definitions of the terms under a specific law.

DELEGATED AND AUTHORIZED DEFINED

Delegated

Generally, delegated means allowing a State/Tribe to apply Federal law standing in the place of the Federal government. Under delegation, a State implements the Federal law in precisely the same way as EPA, for example, would implement that particular Federal law.

Authorized

Generally, authorized means allowing a State to apply its own State laws in lieu of the Federal law. Under authorization, State/Tribal laws must meet the applicable statute requirements for authorization. Under most statutes, State/Tribal laws must be as stringent as the Federal law. Thus, each duly authorized State/Tribe may administer programs that vary somewhat from State to State.

Three environmental statutes that have been amended to allow for EPA authorization of Tribal programs include the Safe Drinking Water Act, Clean Water Act, and Clean Air Act. In addition, EPA has discretion to allow for Tribal programs under other environmental laws (e.g., the Toxic Substances Control Act). The *EPA Policy for the Administration of Environmental Programs on Indian Reservations* recognizes the government-to-government relationship between EPA and Tribal governments, EPA's trust responsibility, and the role of Tribes as the most

appropriate party for regulating Tribal environments where they can demonstrate the authority and capability to do so. For more information pertaining to American Indian Tribes, see Section D of Chapter III.

B. KEY PROVISIONS OF FEDERAL ENVIRONMENTAL LAWS

This section provides summaries of key environmental laws. Each summary includes an overview and a summary of the law; a section that identifies provisions specifically affecting Federal facilities; a section discussing the enforcement roles of EPA, States, Tribes, and citizens; a list of implementing regulations, policies, and guidance; and a list of additional sources of information. Federal facility managers are encouraged to contact EPA's Federal Facility Coordinators (FFCs) to obtain additional information on environmental requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

SECTION B OF CHAPTER II PROVIDES DETAILED SUMMARIES OF THE FOLLOWING ENVIRONMENTAL LAWS

- Clean Air Act (CAA)
- Clean Water Act (CWA)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- Emergency Planning and Community Right-to-Know Act (EPCRA)
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- National Environmental Policy Act (NEPA)
- Oil Pollution Act (OPA)
- Resource Conservation and Recovery Act (RCRA)
- Safe Drinking Water Act (SDWA)
- Toxic Substances Control Act (TSCA)

In addition, Section C of this chapter provides a summary of the Base Closure and Realignment Act and summaries of seven other laws. The laws that are summarized in Section C are listed in the box on the following page.

SUMMARIES OF LAWS PROVIDED IN SECTION C OF CHAPTER II

- Base Closure and Realignment Act (BRAC)
- Atomic Energy Act (AEA)
- Endangered Species Act (ESA)
- Energy Policy Act (EPA)
- Hazardous Materials Transportation Act (HMTA)
- Marine Mammal Protection Act (MMPA)
- National Historical Preservation Act (NHPA)
- Noise Control Act (NCA)

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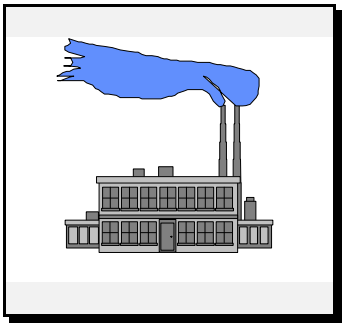
1. Clean Air Act



Overview: Since 1967, the Clean Air Act (CAA) has evolved from a set of principles to guide States in controlling sources of air pollution to a series of detailed control requirements that the Federal government implements and the States administer. CAA has historically regulated air pollution sources through three primary programs: 1) ambient air quality regulation of new and existing sources through emission limits contained in State implementation plans (SIPs); 2) more stringent control technology and permitting requirements of new sources; and 3) specific pollution problems, including hazardous air pollution and visibility impairment. The 1990 amendments to CAA not only modified these three programs, but also addressed new air pollutants and added a fourth category—a comprehensive operating permit program. The comprehensive operating permit program helps to establish in one place all CAA requirements that apply to a given stationary source of air emissions. CAA is set out in six titles: Title I - Air Pollution Prevention and Control, Title II - Emission Standards for Mobile Sources, Title III - General Provisions, Title IV - Acid Deposition Control, Title V - Permits, and Title VI - Stratospheric Ozone Protection. Federal CAA regulations are set forth at 40 CFR Parts 50-99. The CAA statute is found at 42 U.S.C. §7401 et seq.

FEDERAL FACILITY RESPONSIBILITIES UNDER CAA INCLUDE:

- Obtaining necessary permits
- Maintaining emissions within permitted levels
- Complying with State Implementation Plan requirements
- Ensuring that all chlorofluorocarbon (CFC) technicians attend EPA-certified training courses
- Ensuring that all CFC recovery/recycling equipment is certified to EPA standards and venting prohibitions are maintained
- Managing facilities with asbestos-containing material (ACM) and conducting ACM removals in conformance with the air toxics program requirements
- Complying with applicable Federal controls on mobile sources and their fuel
- Developing risk management plans where required
- Maintaining all required records and documentation
- Managing facility construction and modification

a. CAA Summary

CAA is the primary Federal statute regulating air emissions. The objectives of CAA are to:

< Protect and enhance the quality of air resources;

< Initiate and accelerate a national research and development program to prevent and control air pollution;

< Assist State, Tribal, and local governments in the development and implementation of air pollution prevention and control programs; and

< Encourage and assist the development and operation of regional air pollution prevention and control programs.

CAA categorizes regions of the United States as non-attainment areas if air quality within those areas does not meet the required ambient air quality levels set by the National Ambient Air Quality Standards (NAAQS). NAAQS consist of primary and secondary standards for six criteria air pollutants: sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, lead, and particulate matter. Primary standards are established to protect public health. Secondary standards are established to protect public welfare (e.g., plant life, cultural monuments, and wildlife).

States have the authority to establish emission source requirements to achieve attainment of NAAQS. These requirements can be uniform for all sources or be specifically tailored for individual sources. To be approved as Federally enforceable measures in a SIP, EPA must determine that the requirements are consistent with CAA. Source emission requirements in SIPs can be established for stationary and mobile sources.

CAA also establishes standards and requirements to control other air pollution problems. Hazardous air pollutants (HAPs) standards, an acid rain reduction program, and a program to phase out the manufacture and use of ozone-depleting chemicals are the other major programs regulating emissions of air pollutants. The prevention of accidental release and minimization of consequences of any such release of extremely hazardous substances including, but not limited to, the substances published under the Emergency Planning and Community Right-to-Know Act of 1986 are also required under CAA.

Implementation of CAA requirements, for purposes of achieving NAAQS, is achieved primarily through SIPs and various Federal programs. CAA requires States to develop SIPs that establish requirements for the attainment of NAAQS within their geographic areas. SIPs must identify major sources of air pollution, determine the reductions from each source necessary to attain NAAQS, establish source-specific and pollutant-specific requirements as necessary for the area, and demonstrate attainment of NAAQS by the applicable deadlines established in CAA using any combination of tools. If a State fails to submit a plan that is sufficient to attain NAAQS, then EPA is required within 2 years to impose a Federal implementation plan for that region.

Under CAA §§301(d) and 110(o), American Indian Tribes may submit an implementation plan to EPA. These provisions state that the plan shall be reviewed in accordance with the provisions set forth for State plans. Tribal implementation plans are applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation. In addition, CAA §164(c) states that lands within the exterior boundaries of Federally-recognized Indian Tribes may be redesignated only by the appropriate Tribal governing body.

Stationary Sources

CAA establishes a variety of requirements or standards that States apply to stationary emission sources. The following requirements or standards have been established:

< *New Source Performance Standards (NSPS)*: NSPS are nationally uniform emission limitations for new or modified stationary emission sources. The standards are based on the category of the industrial source and the availability of pollution control technology.

< *Lowest Achievable Emission Rate (LAER)*: LAER is a case-by-case technology-based standard required for certain new or modified existing major stationary sources. These rates must be met in addition to NSPS and are implemented by permit.

< *Reasonably Available Control Technology (RACT)*: RACT is a technology-based standard for existing sources usually developed on a source category basis.

In attainment areas where the air is cleaner than the NAAQS or in unclassifiable areas, new or modified major sources must install Best Available Control Technology (BACT). BACT is a technology-based standard that is stricter than NSPS and is part of a program called the Prevention of Significant Deterioration of Air Quality.

The NSPS Program, as prescribed in CAA §111, is a set of nationally uniform emissions standards developed by category of industrial source, and is based on the pollution control technology available to that category of source. This program encompasses “new sources” only, which includes any stationary source constructed or modified after proposal of the regulations applicable to that source. Each source must comply with NSPS set forth in the regulations for its category. Each State may submit to EPA a procedure for implementing and enforcing NSPS within its jurisdiction.

NSPS are set at levels that reflect the degree of control achievable through the application of the best system of continuous emissions reduction that has been adequately demonstrated.

Mobile Sources

Mobile sources include cars, trucks, planes, vessels, and off-road engines and vehicles. EPA generally has authority to set emission standards for these sources and related controls on their fuels. Federal mobile source requirements established by the 1990 CAA Amendments, include stricter automobile emission standards, fuel quality standards, and fleet requirements than required

previously. In particular, some areas must have improved inspection and maintenance programs to ensure that vehicles continue to meet emission standards. Beginning in 1998, CAA also is requiring government agencies that own buses or trucks to buy new clean models (e.g., trucks with new engines that reduce particulate emission by 90 percent). Certain State requirements for motor vehicles, off-road vehicles, and fuels are preempted with a provision for a waiver of preemption.

Permit Program

Title V of the 1990 CAA Amendments established an operating permit program similar to the Clean Water Act for all major stationary sources of air pollution. The CAA permit program is generally administered by the State air pollution control agencies authorized by EPA. Each permit may include a compliance schedule, enforceable emission limits and standards, and requirements for submitting monitoring data. Penalties can be assessed against any source that violates any requirements of its permit. The Title V permit program for major sources is fee-based, and Federal agencies are explicitly subject to any requirement to pay a fee or charge imposed by a State or local agency to defray the costs of its air regulatory program.

Reduction of Hazardous Air Pollutants (HAPs)

EPA is required to list all categories of major sources that release any of the 188 chemicals designated by Congress as HAPs in the 1990 CAA. EPA also reviews and updates the list of chemicals and promulgates emission standards for listed source categories. New and existing major sources of HAPs must comply with applicable National Emission Standards for Hazardous Air Pollutants (NESHAP), which are adopted standards for specified categories of emission sources. Compliance with NESHAP requires a level of emission reduction that can be achieved by a particular source category by implementing Maximum Available Control Technology (MACT). If further emission reduction is necessary to protect public health, EPA may establish health-based standards in addition to MACT.

NESHAP for asbestos, under §112 of CAA, establishes work practices to minimize the release of asbestos fibers during activities involving the processing, handling, and disposal of asbestos and asbestos-containing material when a building is being demolished or renovated. The requirements and standards are described in 40 CFR Part 61, Subpart M.

CAA programs regulating HAP emissions also establish standards for many small stationary sources that do not qualify as “major” sources (e.g., dry cleaners) and include a program to prevent the catastrophic and accidental release of HAPs.

Acid Rain Program

To reduce air pollutants that cause acid rain, the 1990 CAA Amendments developed an innovative program to cut sulfur dioxide and nitrogen oxide emissions from large utilities. The reduction of sulfur dioxide emissions causing acid rain is achieved with a new market-based system. The system allocates sulfur dioxide emission allowances to large power plants. Those that exceed their emission

allowance must either reduce emissions to authorized levels or acquire other facilities' emission allowances.

Ozone Depletion Program

The 1990 CAA Amendments established a new program to protect the stratospheric ozone layer. The program sets a schedule to phase out the production of most ozone-depleting chemicals such as chlorofluorocarbons (CFCs), halons, and hydrochlorofluorocarbons. Other measures include requiring the use of substitute chemicals that are ozone-friendly, recycling CFCs (e.g., in automobile air conditioners), and labeling products containing ozone-depleting chemicals.

b. Application of CAA to Federal Facilities

Federal agencies have broad compliance responsibilities under CAA. In addition to CAA §118, which waives sovereign immunity for Federal facilities, other provisions that focus specifically on Federal facilities include Limitations on Certain Federal Assistance (§176), Federal Procurement (§306), and Policy Review (§309). These sections are described below.

§118: Control of Pollution From Federal Facilities - Federal facilities must comply with all Federal, State, interstate, and local requirements; administrative authorities; and processes and sanctions in the same manner and to the same extent as any nongovernmental entity (§118(a)). This compliance requirement includes any reporting, recordkeeping, permitting requirements, and payment of service charges and fees set forth in regulations or statutes. It also includes cooperating with EPA or State inspections. Section 118 excludes Federal employees from personal liability for civil penalties.

Federal agencies are exempt from CAA obligations under special circumstances. For example, the President may exempt a Federal facility from compliance with a requirement of CAA if it is determined to be in the "paramount interest" of the United States except that no exemption may be granted for CAA §111 and an exemption under CAA §112 may be granted only in accordance with §112(i)(4). Exemptions may not be granted due to the lack of appropriations unless the President shall have specifically requested such appropriations as part of the budgetary process and the Congress shall have failed to make available such requested appropriations. If applicable, the President can exempt a particular emission source or Federal facility for up to 1 year. The President also can issue regulations exempting the compliance of weaponry, equipment, aircraft, vehicles, or other classes or categories of property owned by the Armed Forces and the National Guard that are uniquely military in nature (§118(b)).

Federal facilities must comply with the applicable provisions of a valid automobile inspection and maintenance program, although military tactical vehicles are exempt (§118(c)). Employees who operate motor vehicles on Federal facilities must show proof of compliance with the requirements of a vehicle inspection and maintenance program (§118(d)).

§176: Limitations on Certain Federal Assistance - Federal facilities are prohibited from engaging in, supporting, providing assistance for, or approving activities (e.g., issuing a license or permit) that are inconsistent with SIP requirements (§176(c)).

According to §176(c), activities must conform to an implementation plan's purpose of "eliminating or reducing the severity and number of violations" of NAAQS and achieving "expeditious attainment" of such standards. Such activities must not cause or contribute to a new violation, increase the frequency or severity of an existing violation, or delay timely attainment of any standard, required interim emission reduction, or other milestone.

In addition, §176(d) requires Federal facilities with the authority to support or conduct any program with "air-quality related transportation consequences" to give priority to the implementation of those portions of plans prepared under §176 that achieve and maintain NAAQS.

§306: Federal Procurement - No Federal agency may enter into any contracts with any person who has been convicted of any offense under §113(c) of CAA, if such contracts are to be performed at any facility in which the violation occurred, and if the facility is owned, leased, or supervised by such person.

§309: Policy Review - Federal facilities must submit certain proposed actions to EPA for review and public comment in accordance with the National Environmental Policy Act (NEPA). If the proposing agency does not make sufficient revisions and the project remains environmentally unsatisfactory, EPA may refer the matter to the President's Council on Environmental Quality for mediation. NEPA requirements are discussed in more detail in Section B.6 of this chapter.

c. EPA Enforcement Tools

EPA's enforcement authorities under CAA include in §§112(r), 113, 167, 204, 205, 211, 213, and 303. With respect to Federal facility violations of CAA requirements, EPA may issue a unilateral order or negotiate a compliance agreement with the facility and/or assess penalties. EPA's enforcement authorities are discussed in more detail below. The role of States, Tribal governments, and citizens in enforcing CAA requirements at Federal facilities are discussed below in Sections d, e, and f.

Administrative Assessment of Civil Penalties Against Federal Facilities

A July 16, 1997 opinion issued by the Department of Justice's (DOJ) Office of Legal Counsel concluded that EPA is authorized to assess civil penalties against Federal agencies under the Clean Air Act §§113(d), 205(c), and 211(d)(1). On October 9, 1998, EPA issued the *Guidance on Implementation of EPA's Penalty/Compliance Order Authority Against Federal Agencies Under the Clean Air Act (CAA).* This guidance is summarized in Chapter V. Appendix B contains a copy of this guidance and the DOJ CAA opinion.

The civil monetary penalties listed have been adjusted pursuant to the Debt Collection Improvement Act of 1996. Federal facilities are subject to the CAA penalties presented on the following page.

< **§113(d)(1):** Any person who violates any requirement or prohibition of an applicable implementation plan, attempts to construct or modify a major stationary source not in compliance with new source requirements as specified in CAA §113(a)(5), or violates any other requirement specified in §113(d)(1)(B) is punishable by a civil administrative penalty of up to $27,500 per day of violation. The maximum penalty that can be assessed is $220,000, except where the EPA Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment.

< **§113(d)(3):** Authorizes EPA to implement, after consulting with the Attorney General and States, a field citation program under which civil penalties of up to $5,500 per day of violation may be assessed for minor infractions.

< **§205(c):** Authorizes EPA to assess any civil penalty prescribed in §205(a) and other subsections specified in §205(c), in lieu of commencing a civil penalty action. The penalty should not exceed $220,000, unless the EPA Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment.

FEDERAL FACILITIES ARE SUBJECT TO CAA FINES AND PENALTIES

, *Civil administrative penalties of up to $27,500 per day of violation for violations specified in §113(d)(1). Total penalties generally are not to exceed $220,000.*

, *Civil penalties of up to $27,500 per day of violation and the amount of economic benefit or savings resulting from the violation for failing to furnish information, conducting required tests, or violating any requirements as specified in §211(d)(1).*

< **§211(d)(1):** Any person who fails to furnish information or conduct required tests or who violates any subsection requirement specified in §211(d)(1) is punishable by a civil penalty of up to $27,500 per day of violation and the amount of economic benefit or savings resulting from the violation. This section authorizes EPA to assess such penalty in accordance with CAA §205(c).

< **§213(d):** The emission standards developed under §213 (Nonroad Engines and Vehicles) shall be enforced in the same manner as standards prescribed under §202 (Emission Standards for New Motor Vehicles or New Motor Vehicle Engines). EPA may assess civil administrative penalties in accordance with CAA §205(c).

The July 1997 DOJ opinion does not address State enforcement authorities. Therefore, EPA Regions should conduct, as appropriate, CAA inspections at Federal facilities even in States with authorized programs. Regions also should issue administrative orders and assess penalties based on referrals from State inspections. As appropriate, States should be encouraged to refer cases to EPA Regions for enforcement action.

Criminal Enforcement

In addition to issuing orders, negotiating compliance agreements, and assessing civil penalties, sanctions may be sought against individual employees of Federal facilities for criminal violations of CAA. Enforcement of criminal violations is authorized under CAA §113(c), which establishes fines and penalties for several types of criminal violations, as specified below.

< **§113(c)(1):** Any person who knowingly violates certain CAA requirements is punishable by a fine pursuant to 18 U.S.C. §3571, the Alternatives Fines Act (hereinafter referred to as Title 18), or by imprisonment not to exceed 5 years, or both. A second conviction for a knowing violation may result in a maximum punishment double that for a first-time knowing violation (i.e., double the fine and/or imprisonment not to exceed 10 years).

< **§113(c)(2):** Authorizes a punishment by fine pursuant to Title 18 and/or imprisonment for not more than 2 years for falsifying information, falsifying methods or devices, or failing to notify or report as required. CAA §113(c)(2) also authorizes doubling fines and imprisonment for violations committed after a first conviction.

< **§113(c)(3):** Establishes fines under Title 18 and/or imprisonment not to exceed 1 year for failure to pay any fee owed to the United States. CAA §113(c)(3) also authorizes doubling fines and imprisonment for violations committed after a first conviction.

< **§113(c)(4):** Establishes fines under Title 18 and/or imprisonment not to exceed 1 year for persons who negligently release into the ambient air any hazardous air pollutant or hazardous substance and who at the time negligently places another person in imminent danger of death or serious bodily injury. CAA §113(c)(4) also authorizes doubling fines and imprisonment for violations committed after a first conviction.

< **§113(c)(5):** Authorizes a punishment by fine under Title 18 and/or imprisonment of not more than 15 years for knowing releases of hazardous air pollutants when it is known that such release places another person in imminent danger of death or serious bodily injury. CAA §113(c)(5) also authorizes a fine of not more than $1,000,000 for each violation for organizations convicted of a knowing release. Additionally, CAA §113(c)(5) authorizes doubling fines and imprisonment for violations committed after a first conviction.

In accordance with CAA §306, a person who has been convicted of a criminal offense or has a serious pattern of civil violations may be barred from receiving Federal government contracts, loans, and grants.

Emergency Authority

CAA §303 authorizes EPA to immediately bring suit or to take other action as may be necessary to restrain any action that is causing or contributing to the emission of air pollutants presenting an imminent and substantial endangerment to public health or welfare, or the environment. Section 303

also requires EPA, prior to taking any action, to consult with State and local authorities and attempt to confirm the accuracy of the information on which the proposed action is to be taken.

d. State Enforcement

States have the authority to adopt and implement measures to attain and maintain primary and secondary standards for each air quality control region under CAA §107 and §110. EPA reviews these measures and approves their inclusion into the SIP if they meet the requirements of the CAA, such as including enforceable emission limitations, schedules, timetables, and other control measures (e.g., economic incentives such as fees, marketable permits, and auctions of emissions rights). SIPs also must include a program to enforce these measures. EPA may delegate authority to each State to implement procedures for recordkeeping, inspections, monitoring, and entry requirements as authorized in CAA §114. EPA can take compliance and assistance enforcement actions in these States as well.

e. Tribal Enforcement

CAA §301(d) authorizes EPA to treat Indian Tribes as States. EPA regulations specifying CAA provisions that are appropriate for treating Indian Tribes as States have been issued (see 63 *FR* 7254, February 12, 1998).

f. Citizen Enforcement

Section 304(a) states that any person may file a civil action against any Federal facility for a violation of an emission standard or limitation, or for a violation of an order issued by EPA or a State with respect to such a standard or limitation. In addition, CAA §304(a) authorizes citizens to file a civil action against the EPA Administrator for alleged failure to perform any non-discretionary act or duty.

CAA §304(b) precludes citizens from filing a civil action if EPA or the State has filed and is diligently prosecuting a civil enforcement action in a court; however, citizens can intervene in the case. It is EPA's position that Federal agencies are liable for civil penalties when successfully sued under the citizen suit provision of CAA.

In addition, CAA §304(b) precludes citizens from filing a suit until notification is given to EPA, the State in which the alleged violation occurred, and the facility alleged to be in violation of a standard, limitation, or order. Additional conditions and requirements pertaining to citizen suits are set forth in CAA §304(a) through (g).

g. EPA CAA Regulations

Federal CAA regulations are set forth in Title 40 of the *Code of Federal Regulations* (40 CFR) Parts 50-99. Selected CAA regulations are listed in the box on the following page.

EPA CAA REGULATIONS

40 CFR 49	Tribal Clean Air Act Authority
40 CFR 51	Requirements for Preparation, Adoption, and Submittal of Implementation Plans
40 CFR 52	Approval and Promulgation of Implementation Plans
40 CFR 54	Prior Notice of Citizen Suits
40 CFR 55	Outer Continental Shelf Air Regulations
40 CFR 60	Standards of Performance for New Stationary Sources
40 CFR 61	National Emission Standards for Hazardous Air Pollutants (NESHAPs)
40 CFR 62	Approval and Promulgation of State Plans for Designated Facilities and Pollutants
40 CFR 63	National Emission Standards for Hazardous Air Pollutants for Source Categories
40 CFR 64	Compliance Assurance Monitoring
40 CFR 66	Assessment and Collection of Noncompliance Penalties by EPA
40 CFR 67	EPA Approval of State Noncompliance Penalty Program
40 CFR 68	EPA Provisions for Chemical Accident Prevention
40 CFR 69	Special Exemptions From Requirements of the Clean Air Act
40 CFR 70	State Operating Permit Programs
40 CFR 71	Federal Operating Permit Programs
40 CFR 72	Regulations on Permits
40 CFR 73	Sulfur Dioxide Allowance System
40 CFR 74	Sulfur Dioxide Opt-ins
40 CFR 75	Emission Monitoring
40 CFR 76	EPA Regulations on Acid Rain Nitrogen Oxides Emission Reduction Program
40 CFR 77	Excess Emissions
40 CFR 78	Appeal Procedures for Acid Rain Program
40 CFR 79	Registration of Fuels and Fuel Additives
40 CFR 80	Regulation of Fuels and Fuel Additives
40 CFR 81	Designation of Areas for Air Quality Planning Purposes
40 CFR 82	Protection of Stratospheric Ozone
40 CFR 85	Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines
40 CFR 86	Control of Air Pollution from New and In-Use Motor Vehicles and Engines: Certification and Test Procedures
40 CFR 87	Control of Air Pollution from Aircraft and Aircraft Engines
40 CFR 88	Clean Fuel Vehicles
40 CFR 89	Control of Emissions From New and In-Use Nonroad Engines
40 CFR 90	Control of Emissions From Nonroad Spark-Ignition Engines
40 CFR 91	Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition and Diesel Compression-Ignition Marine Engines
40 CFR 92	Control of Air Pollution from Locomotives and Locomotive Engines
40 CFR 93	Determining Conformity of Federal Activities to State or Federal Implementation Plans
40 CFR 95	Mandatory Patent Licenses

h. EPA CAA Policies and Guidance

There are many EPA rules, policies, and guidance documents covering various aspects of CAA. The box on the following page includes a partial list of available CAA publications.

EPA CAA POLICIES AND GUIDANCE

Accidental Release Prevention Requirements: Risk Management Programs under Section 112(r)(7) of the Clean Air Act as Amended; Guidance, 61 FR 31733 (June 20, 1996)

Clean Air Marketplace, EPA 410-N-93-001

Clean Air Act Amendments of 1990: Detailed Summary of Titles, EPA 400-R-90-100 (1991)

Compilation of Air Pollutant Emission Factors Volume 1: Stationary Point and Area Sources, Fourth Edition, EPA 450-AP424ED (1986)

Compilation of Air Pollutant Emission Factors Volume 1: Stationary Point and Area Sources, Supplemental Edition, EPA 450-AP424EDF (1994)

Guidance on Implementation of EPA's Penalty/Compliance Order Authority Against Federal Agencies Under the Clean Air Act (CAA), Office of Enforcement and Compliance Assurance (October 9, 1998)

Implementation Strategy for Clean Air Act Amendments of 1990, Update 1993, EPA 410-K-93-001 (1993)

Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act, EPA Office of Air Quality Planning and Standards (August 2, 1996)

Plain English Guide to the Clean Air Act, EPA 400-K-93-001 (April 1993)

Pollution Prevention and the Clean Air Act: Benefits and Opportunities for Federal Facilities, EPA Federal Facilities Enforcement Office (FFEO), EPA 300-B-96-009A&B (May 1996)

Review of Federal Authorities for Hazardous Materials Accident Safety; Report to Congress §112(r)(10) Clean Air Act as Amended, EPA 550-R-93-002 (1993)

Revised Compliance Monitoring Strategy, EPA Office of Air and Radiation (March 29, 1991)

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on CAA requirements. Appendix A provides the names and phone numbers for each EPA FFC and the roles and responsibilities of FFCs are discussed in Chapter VII.

Stratospheric Ozone Information Hotline: The Hotline provides general information on stratospheric ozone depletion and its protection, as well as consultation on ozone protection regulations and requirements under the 1990 CAA Amendments. To contact the Hotline, call 1-800-296-1996. The Hotline's Internet address is www.epa.gov/ozone/

FOR MORE INFORMATION (continued)

EPA Control Technology Center (CTC): The Center provides general assistance and information on the Clean Air Act. It also provides technical assistance regarding Federal air pollution standards and air pollution control technologies. To contact the Center, call (919) 541-0800. The Internet address is www.epa.gov/oar/oaq_ttn.html

Emission Measurement Technical Information Center: The Center provides information including air emissions testing methods, emission monitoring guidance, and Federal testing and monitoring requirements. To contact the Center, call (919) 541-1060.

Air Risk Information Support Center (Air RISC): The Air RISC assists State and local air pollution control agencies and EPA Regional offices with technical matters pertaining to health, exposure, and risk assessment of air pollutants. To contact the Center, call (919) 541-0888. The Internet address is www.epa.gov/oar/oaq_ttn.html

Acid Rain Hotline: The Acid Rain Hotline, (202) 233-9620, records questions and document requests covering all areas of the Acid Rain Program. The Hotline assists callers who have specific technical or policy questions by forwarding those inquiries to experienced EPA Acid Rain Division personnel, who review them and respond to the caller, typically within 24 hours.

National Air Toxics Information Clearinghouse: The Clearinghouse collects, classifies, and disseminates air toxics (non-criteria pollutant) information submitted by State and local agencies and promotes awareness of published air toxics information from EPA and other Federal agencies. To contact the Clearinghouse, call (919) 541-0888.

Asbestos Ombudsman: The assigned mission of the Asbestos Ombudsman is to provide the public sector, including individual citizens and community services, with information on handling, abatement, and management of asbestos in schools, the workplace, and the home. To contact the Ombudsman, call (703) 305-5938 or 1-800-368-5888.

RCRA, Superfund, and EPCRA Hotline: This Hotline is a publicly accessible service that provides up-to-date information on several EPA programs and provides copies of regulations that have appeared in the *Federal Register*. The Hotline responds to factual questions on Federal EPA regulations developed under the Resource Conservation and Recovery Act, including the Underground Storage Tank program, superfund, Emergency Planning and Community Right-to-Know Act, and the Oil Pollution Act. The Hotline provides documents and regulatory information related to the Accidental Release Prevention Program (CAA §112(r)). To contact the Hotline, dial (703) 412-9810 or call 1-800-535-0202. The Internet address is www.epa.gov/epaoswer/hotline.

FOR MORE INFORMATION (continued)

Office of Air Quality Planning and Standards Technology Transfer Network: This Network, which is accessible via modem at (919) 541-5742, provides a comprehensive, chronological list of recent CAA rules, policies, and guidance documents. The Control Technology Center provides CAA regulatory information and referrals to other CAA offices. To contact the Control Technology Center, call (919) 541-0800. The Internet address is www.epa.gov/tnn/

Office of Air and Indoor Radiation Home Page: http://www.epa.gov/oar/

Office of Air Quality Planning and Standards Home Page: http://www.epa.gov/oar/oaqps/

Office of Mobile Services Home Page: http://www.epa.gov/OMSWWW/

Acid Rain Program Home Page: http://www.epa.gov/acidrain/ardhome.html

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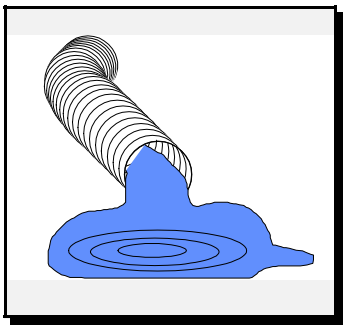
2. Clean Water Act



Overview: The Clean Water Act (CWA) is the primary Federal statute regulating the protection of the nation's waters. CWA was enacted in 1972 in response to nationwide water pollution issues and was amended in 1977 and 1987. Section 311 of CWA was amended by the Oil Pollution Act (OPA) of 1990, which has its own separate regulation and enforcement scheme. OPA is discussed in Section B.7 of this chapter. CWA established national programs for the prevention, reduction, and elimination of pollution in navigable water and groundwater. It also sets up a water quality standards program and required permits for discharge and treatment of wastewater and stormwater. The major sections of CWA are Effluent Limitations (§301); Water Quality Related Effluent Limitations (§302); Water Quality Standards (§303); Toxic and Pretreatment Effluent Standards (§307); Records, Reports, and Inspections (§308); Enforcement (§309); Oil and Hazardous Substance Liability (§311); Marine Sanitation Devices (§312); Federal Facilities Pollution Control (§313); Non-point Source Management Programs (§319); State Certification of Federal Licenses or Permits (§401); National Pollutant Discharge Elimination System (NPDES) Program (§402); Ocean Discharge Criteria (§403); Permits for Dredged or Fill Material (§404); and Disposal or Use of Sewage Sludge (§405). Regulations of interest to Federal facilities include the NPDES Program; Toxic Pollutant Effluent Standards; Water Quality Standards; Secondary Treatment; Great Lakes Requirements; Permits for Dredged or Fill Material; General Provisions for Effluent Guidelines and Standards; General Pretreatment Regulation; and the Spill Prevention, Control, and Countermeasure (SPCC) Plans. Regulations addressing clean water are found at 40 CFR Parts 100-136, 140, 230-233, 401-471, and 501-503. The statute can be found at 33 U.S.C. §1251 et seq. This summary of the CWA focuses on the oil and hazardous substance liability, NPDES, pretreatment, wetlands, and sludge programs.

FEDERAL FACILITY RESPONSIBILITIES UNDER CWA INCLUDE:

- Obtaining a National Pollutant Discharge Elimination System permit and managing direct discharges in compliance with permit conditions
- Managing discharges to a Publicly-Owned Treatment Works in accordance with established Federal, State, and local pretreatment standards
- Managing domestic treatment works in accordance with sludge requirements
- Applying for §404 dredge and fill permits for construction and development projects
- Monitoring, recording, and reporting pollutant effluent concentrations
- Develop, implement, and maintain stormwater pollution prevention plans and obtain necessary permits
- Develop Spill Prevention, Control, and Countermeasure Plans

a. CWA Summary

CWA is the primary Federal statute governing the restoration and maintenance of the "chemical, physical, and biological integrity of the Nation's waters." Its principal objectives are to:

< Prohibit discharges of pollutants into U.S. navigable waters, except in compliance with a permit; and

< Achieve an interim goal of protecting water quality that, wherever attainable, provides for the protection and propagation of shellfish, fish, and wildlife, and provides for recreation in and on the water.

To achieve these objectives, CWA authorizes EPA and States to regulate, implement, and enforce compliance with guidelines and standards to control the direct and indirect discharge of pollutants into U.S. waters. The EPA Administrator is authorized to treat an Indian Tribe as a State for the purpose of several provisions including the Grants for Pollution Control Programs (§106), Water Quality Standards (§303), Enforcement (§309), and NPDES (§402).

CWA establishes several major integrated regulatory programs, standards, and plans, which include the following:

< *National Pollutant Discharge Elimination System (NPDES) Program*: Establishes an effluent permit system for point source (e.g., pipe, ditch) discharges into navigable waters. The stormwater program is a part of the NPDES program and is designed to prevent the discharge of contaminated stormwater into navigable waters. Stormwater program requirements address permit applications, regulatory guidances, and management and treatment requirements (§402).

< *National and Local Pretreatment Standards*: Requires new and existing industrial users to pretreat wastewater discharged to Publicly-Owned Treatment Works (POTWs) to prevent pollutants in excess of certain limits from passing through POTWs or causing interference in the operation of the treatment works (§307).

< *Dredge or Fill Discharge Permit Program*: Establishes a permit system, administered by the Army Corps of Engineers, for regulating the placement of dredge or fill material into waters of the United States, including wetlands (§404).

< *Sewage Sludge Use and Disposal Program*: Protects human health and the environment when sewage sludge is beneficially applied to the land, incinerated, or placed in a surface disposal site by requiring generators, processors, users, and disposers of sewage sludge from privately- or Publicly-Owned Treatment Works to meet certain standards (§405).

b. Application of CWA to Federal Facilities

There are numerous Federal facility activities that may be regulated by CWA. Examples include any activities involving the collection and discharge of effluents (e.g., discharging pollutants from a point source into waters of the United States) or construction activities in the vicinity of waterways or wetlands. CWA provisions potentially affecting Federal facilities are discussed below.

§303: Water Quality Standards and Implementation Plans - Section 303(d) and EPA water quality planning and management regulations require States to identify waters that do not meet or are not expected to meet water quality standards even after technology-based or other required controls are in place. States are required to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

§307: National and Local Pretreatment Standards - Facilities that discharge to POTWs are excluded from NPDES permitting requirements but are subject to national general pretreatment standards (40 CFR Part 403), applicable categorical pretreatment standards (specified in 40 CFR Parts 405-471), and any State or local pretreatment standards. Facilities must sample the effluent and submit reports on the results of such sampling at a frequency specified in the permit. Monitoring reports must be submitted to EPA, States, or POTWs with approved pretreatment programs.

The 1992 Federal Facility Compliance Act added §3023 titled Federally-Owned Treatment Works (FOTWs) to the Resource Conservation and Recovery Act. Under §3023, FOTWs are defined as Federally-Owned and operated wastewater treatment works that 1) have an NPDES permit and 2) treat influent that is composed of a majority of domestic sewage. Section 3023 extends to FOTWs the so-called Domestic Sewage Exclusion (DSE) from the definition of "solid waste," provided the FOTW meets all the conditions set forth in §3023. See Section B.8 of this chapter for more information on §3023 requirements.

§308: Inspections, Monitoring, and Entry - EPA, State agencies, or their authorized representatives (e.g., contractors) have broad authority to conduct compliance inspections at any premises on which an effluent source is located (including Federal facilities), or in which any records required to be maintained under §308 are located. EPA or State inspectors may have access to any records, inspect any monitoring equipment, and sample any effluent to check compliance with NPDES permit requirements, water quality standards, pretreatment standards, effluent limitations, or toxic standards.

§311: Oil and Hazardous Substance Liability - The discharge of oil or hazardous substances into or upon the navigable waters of the United States, or adjoining shorelines, or into or upon the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States is prohibited.

Any person in charge of a vessel, an on-site facility, or an offshore facility is required, as soon as she/he has knowledge of any discharge of oil or a hazardous substance, to immediately notify the appropriate Federal agency of the discharge.

40 CFR 122.1(c) requires Federal facilities to have a fully prepared and implemented SPCC Plan. SPCC Plans are discussed in more detail following the discussion of CWA §508, Federal Procurement.

§311(a)(6): Definition of "Owner or Operator" - "Owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

§311(a)(7): Definition of "Person" - "Person" includes an individual, firm, corporation, association, and a partnership.

§311(a)(10): Definition of "Onshore Facility" - "Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.

§311(a)(10): Definition of "Offshore Facility" - "Offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

§312: Marine Sanitation Devices - Section 312 regulates the discharge of vessel sewage to prevent the discharge of untreated or inadequately treated sewage from vessels into U.S. waters. Section 325 of the National Defense Authorization Act of 1996 amended CWA §312 by authorizing EPA and the Department of Defense to jointly establish Uniform National Discharge Standards for incidental liquid discharges from vessels of the Armed Forces. Federal agencies responsible for vessels of the Armed Forces are liable for a penalty of not more than $5,000 for each violation of §312(n)(8).

§313: Federal Facilities Pollution Control - Each Federal agency having jurisdiction over any facility or engaged in activity resulting, or which may result, in the discharge or runoff of pollutants is subject to, and must comply with, all Federal, State, interstate, and local requirements and administrative authorities for the control and abatement of water pollution. This includes adhering to any reporting, recordkeeping, or permitting requirements.

If the President determines it to be in the paramount interest of the United States, he may exempt any effluent source of any department, agency, or instrumentality in the Executive Branch from compliance with any requirements of CWA for a 1-year period, except for requirements under the National Standards of Performance (§306) and the Toxic and Pretreatment Effluent Standards (§307). Exemptions are renewable annually. The President must report to Congress every January on all exemptions granted during the preceding calendar year and provide the reason for granting the exemptions.

Section 313 of CWA waives the traditional immunity of the Federal government and requires Federal facilities to comply with Federal, State, interstate, and local water pollution controls.

Requirements include compliance with EPA or State inspections and all applicable Federal, State, interstate, and local substantive and procedural requirements (including recordkeeping, reporting, payment of reasonable service charges, and permits). Section 313 exempts Federal employees from civil penalties.

§402: National Pollutant Discharge Elimination System - Point source discharges of wastewater must comply with requirements established by a NPDES permit issued by EPA or a State agency that has an approved NPDES program. NPDES permits contain water quality-based and/or technology-based standards for effluent discharges (specified in 40 CFR Parts 405-471 or by the best professional judgment of the permit writer), monitoring requirements, analytical testing methods, and reporting requirements. Dischargers must submit Discharge Monitoring Reports that record flow measurement, sample collection data, and laboratory test results on a quarterly or monthly basis. Noncompliance reports must be submitted quarterly or monthly stating the cause of a noncompliance, period of noncompliance, and plans to eliminate recurrence of the incident.

Point source stormwater discharges that are associated with certain industrial activities or are designated by EPA for contributing to a violation of water quality standards also require a permit.

§404: Permits for Dredged or Fill Material - Facilities that discharge dredged or fill materials into navigable waters must apply for a permit issued by the Army Corps of Engineers. EPA also may restrict or deny the dredging or filling of any site where the activity could have an adverse effect on the environment. States may apply for the authority to implement the §404 program. However, the Army Corps of Engineers retains authority over navigable waters within the State. Under limited circumstances, the discharge of dredged or fill materials, as part of a Federal project specifically authorized by Congress, is not prohibited by, or subject to, regulation under §404. However, an Environmental Impact Statement on the effects of the project pursuant to the National Environmental Policy Act of 1969 must be submitted to Congress before the actual discharges of dredged or fill materials.

§405: Permits of Sludge Management - All treatment works that treat domestic sewage are required to meet Federal requirements for the use and disposal of sewage sludge through land application, surface disposal, or incineration. These requirements are incorporated into permits issued under §402 of CWA, under the appropriate provisions of other legislation (e.g., Solid Waste Disposal Act; Safe Drinking Water Act; Marine Protection, Research, and Sanctuaries Act; or the Clean Air Act), under EPA-approved State sludge management programs, or, in the case of a treatment works that is not subject to the above requirements, in a sludge-only permit.

§508: Federal Procurement - No Federal agency may enter into any contracts with any person who has been convicted of any offense under §309(c) of CWA, if such contracts are to be performed at any facility in which the violation occurred, and if the facility is owned, leased, or supervised by such people.

Spill Prevention, Control, and Countermeasure (SPCC) Plans

EPA's Oil Pollution Prevention regulation establishes requirements for facilities to prevent oil spills from reaching navigable waters of the United States or adjoining shorelines. The rule applies to owners or operators of certain facilities that drill, produce, gather, store, process, refine, transfer, distribute, or consume oil. The regulation requires that all regulated facilities (including Federal facilities as specified in 40 CFR 112.1(c)) have a fully prepared and implemented SPCC Plan. EPA's Oil Pollution Prevention regulation is found at 40 CFR 112.

A SPCC Plan is a detailed, facility-specific, written description of how a facility's operations comply with the prevention guidelines in the Oil Pollution Prevention regulation. These guidelines include measures such as secondary containment, facility drainage, dikes or barriers, sump and collection systems, retention ponds, curbing, tank corrosion protection systems, and liquid devices. A registered professional engineer must certify each SPCC Plan.

Unlike oil spill contingency plans that typically address spill cleanup measures after a spill has occurred, SPCC Plans ensure that facilities put in place containment and other countermeasures that would prevent oil spills that could reach navigable waters. Under the regulation, facilities must detail and implement spill prevention and control measures in their SPCC Plans. A spill contingency plan is required as part of the SPCC Plan if a facility is unable to provide a secondary containment.

The regulation applies to non-transportation-related facilities with a total aboveground (i.e., not completely buried) oil storage capacity of greater than 1,320 gallons (or greater than 660 gallons capacity in a single aboveground container) or total underground (i.e., buried) oil storage capacity greater than 42,000 gallons. This regulation applies specifically to a facility's storage capacity, regardless of whether the tank(s) is completely filled. In addition to the storage capacity criteria, facilities are regulated if due to their location the facility could reasonably be expected to discharge oil into navigable waters of the United States or adjoining shorelines.

Non-transportation-related facilities include all fixed facilities, including support equipment, but excludes certain pipelines, railroad tank cars en route, transport trucks en route, and equipment associated with the transfer of bulk oil to or from water transportation vessels. The term also includes mobile or portable facilities, such as drilling or workover rigs, production facilities, and portable fueling facilities. The SPCC Plan only applies while the mobile or portable facility is in a fixed operating mode.

The SPCC Plan for a mobile or portable facility may be a general plan prepared in accordance with the Oil Pollution Prevention regulation. A new SPCC Plan is not required each time the facility is moved to a new site. However, the regulation states that onshore mobile or portable oil storage tanks (onshore) should be positioned or located to prevent spilled oil from reaching navigable waters. In addition, in accordance with the regulation, a secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. Moreover, mobile or portable facilities should not be located where they will be subject to periodic flooding or washout.

c. EPA Enforcement

EPA's enforcement authorities are set forth in §309 of CWA. CWA §309(a)(3) authorizes EPA to require Federal agencies to return to compliance for violations of CWA requirements such as pretreatment standards, NPDES permit conditions, or discharges without a required permit. Other authorities are found in §311(e) and (c) for violations of spill prevention requirements and for spills. EPA, States, and Tribal governments may seek sanctions against Federal employees for criminal violations of CWA. States, Tribal governments, and citizens are authorized under CWA to enforce CWA requirements, as discussed below in Sections d, e, and f. Historically, EPA has not assessed civil penalties against Federal agencies for violations of CWA. This practice is based on the current status of the law and should continue to be the practice absent some change in the law. However, EPA may assess penalties against Federal agencies which violate §312 due to a recent congressional amendment of this particular provision.

Federal Facility Compliance Agreements

Typically, EPA will negotiate a Federal Facility Compliance Agreement with Federal agencies that are in violation of CWA requirements. The typical compliance agreement contains several provisions including a schedule for achieving compliance, citizen suit provisions regarding the enforceability of the settlement, and dispute resolution.

Criminal Enforcement

In addition to negotiating compliance agreements, sanctions may be sought against individual employees of Federal facilities for criminal violations of CWA. Criminal fines may be imposed under either CWA §309(c) or 18 U.S.C. §3571, the Alternative Fines Act. Enforcement of criminal violations is authorized under CWA §309(c) for negligent and knowing violations, for knowing endangerments, and for making false statements. Fines and penalties under CWA §309(c) for several types of criminal violations are specified below:

< **§309(c)(1): Negligent Violations -** Any negligent violation of certain CWA requirements (e.g., Effluent Limitations (§301) and Aquaculture (§318)) is punishable by a fine of not less than $2,500 nor more than $25,000 per day of violation and/or by imprisonment not to exceed 1 year. A second conviction for a negligent violation is punishable by a fine of not more than $50,000 per day of violation and/or imprisonment not to exceed 2 years.

< **§309(c)(2): Knowing Violations -** Any knowing violation of certain CWA requirements is punishable by a fine of not less than $5,000 per day of violation and/or by imprisonment not to exceed 3 years. A second conviction for a knowing violation is punishable by a fine of not more than $100,000 per day of violation and/or imprisonment not to exceed 6 years.

< **§309(c)(3): Knowing Endangerment -** Any knowing violation of certain CWA requirements that places another person in imminent danger of death or serious bodily injury is punishable by a fine of not more than $250,000 and/or by imprisonment not to exceed 15 years. A second conviction for knowing endangerment may result in a maximum punishment

double that for a first-time violation (i.e., double the fine and/or imprisonment not to exceed 30 years).

< **§309(c)(4): False Statements -** Any person who knowingly makes any false statements may be punished by a fine of not more than $10,000 and/or by imprisonment not to exceed 2 years. A second conviction for making false statements is punishable by a fine of not more than $20,000 per day of violation and/or imprisonment of not more than 4 years.

Additionally, in accordance with CWA §311(b)(5), failure to immediately notify the appropriate Federal agency of an oil or hazardous substance discharge is punishable by a fine pursuant to Title 18 and/or by imprisonment not to exceed 5 years.

In accordance with CWA §508, a person who has been convicted of a criminal offense or has a serious pattern of civil violations may be barred from receiving Federal government contracts, loans, and grants.

Emergency Authority

Pursuant to CWA §504, even if there are no violations of CWA, when a non-Executive branch agency or department pollution source or sources present an imminent and substantial danger to public health or welfare, EPA may immediately bring suit to restrain the pollution to stop the discharge against all regulated entities, including those within the Executive Branch, EPA may also take other necessary action. No penalties are authorized under §504. CWA §311(c)(2) authorizes EPA to direct all Federal, State, and private action to remove a discharge or to mitigate or prevent the threat of discharge of oil or a hazardous substance that is a substantial threat to the public health or welfare. This authority includes responding to discharges or the threat of discharges from a vessel, offshore facility, or onshore facility.

d. State Enforcement

Authorized States can issue administrative compliance orders or take civil judicial action against violators of CWA provisions, including Federal facilities. States also can file a criminal action against a Federal employee that may result in significant fines and/or prison sentences. Further, States can take action to debar persons convicted under CWA §309 and thereby prevent them from bidding on Federal contracts.

e. Tribal Enforcement

CWA §518 provides that Indian Tribes shall be treated as States with respect to several CWA provisions including §309, Enforcement. Tribal governments, therefore, may be authorized by EPA to undertake certain activities under CWA.

f. Citizen Enforcement

CWA §505(a) allows citizens to file a civil action (civil suit) against any Federal agency that is alleged to be in violation of an effluent standard or limitation or an order issued by EPA or a State with respect to such standards and limitations. In addition, CWA §505(a) allows citizens to file a civil action against the EPA Administrator for alleged failure to perform any non-discretionary act or duty.

CWA §505(b) excludes citizens from filing a civil action if EPA or the State has filed and is diligently prosecuting a civil or criminal action; however, citizens can intervene in the case. In addition, CAA §505(b) precludes citizens from filing a suit until notification is given to EPA, the State in which the alleged violation occurred, and the facility alleged to be in violation of a standard, limitation or order. Additional conditions and requirements pertaining to citizen suits are set forth in CWA §505(a) through (h).

g. EPA CWA Regulations

Federal CWA regulations are set forth in 40 CFR Parts 100-133, 135 Part A, 136, 140, 230-233, 401-471, and 501-503. Various sections of the CWA regulatory program are presented below and on the following page.

EPA CWA REGULATIONS

National Pollutant Discharge Elimination System (NPDES)

40 CFR 112	Oil Pollution Prevention
40 CFR 122	EPA Administered Permit Programs: The NPDES Program
40 CFR 123	NPDES State Programs Requirements
40 CFR 125	Criteria and Standards for NPDES Permits

Stormwater Permitting

40 CFR 122	Stormwater Discharges

Toxic Pollutant Effluent Standards

40 CFR 129	Toxic Pollutant Effluent Standards

Water Quality Standards and Implementation Plans

40 CFR 130	Water Quality Management Plans
40 CFR 131	Establishment of Water Quality Standards; Federally Promulgated Water Quality Standards
40 CFR 140	Marine Sanitation Device Standard
40 CFR 132	Great Lakes Requirements

Dredged or Fill Discharge Permit Program

40 CFR 230	Dredged or Fill Permits
40 CFR 231	Section 404 Procedures

EPA CWA REGULATIONS (continued)

National and Local Pretreatment Standards and Effluent Guidelines

40 CFR 133	Secondary Treatment Regulation
40 CFR 401	General Provisions for Effluent Guidelines and Standards
40 CFR 403	EPA General Pretreatment Standards
40 CFR 405-471	Effluent Limits for Point Source Categories

Sewage Sludge Use and Disposal Program

40 CFR 501	State Sludge Management Program Regulations
40 CFR 503	Standards for the Use or Disposal of Sewage Sludge

h. EPA CWA Policies and Guidance

There are many CWA guidance and policy documents. Selected CWA guidance and policy documents are listed below.

EPA CWA POLICIES AND GUIDANCE

Clean Water Act Penalty Policy (1995)

CWA Compliance/Enforcement Compendium, EPA 325-R-95-001

The National Response Teams Integrated Contingency Plan Guidance, 61 F.R. 28642 (June 5, 1996)

NPDES Inspection Policy (1995)

Water Quality Assessment: A Screening Procedure for Toxic and Conventional Pollutants in Surface and Ground Water: Part 2, EPA-600\6-85-022B (September 1985)

FOR MORE INFORMATION

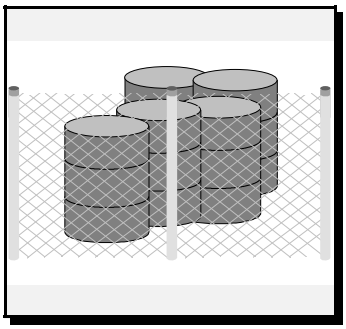
EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FCC) for more information on CWA requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

Water Docket: This Docket consists of hard copies of materials used to develop water regulations, as well as related *Federal Register* notices. The Docket can be reviewed at EPA, Water Docket 4101, 401 M Street, S.W., Room L-102, Washington, D.C. 20460, or by calling (202) 260-3027.

EPA's Permit Compliance System (PCS): PCS is a computerized management information system that contains data on NPDES permit-holding facilities. PCS tracks permit, compliance, and enforcement status of NPDES facilities and is available to EPA programs, Regions, and States. For more information contact the PCS User Support Line at (202) 564-7277, Monday - Friday, 8:00 a.m. to 4:00 p.m. (EST), or the PCS Overview on the Internet at http://www.epa.gov/envro/html/PCS/pcs_overview.html

Office of Water Home Page: http://www.epa.gov/ow/

3. Comprehensive Environmental Response, Compensation, and Liability Act



Overview: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, was enacted in 1980 and amended in 1986. CERCLA's major emphasis is on the cleanup of inactive hazardous waste sites and the liability for cleanup costs on arrangers and transporters of hazardous substances and on current or former owners of facilities where hazardous substances were disposed. CERCLA gives the President authority to clean up these sites under what may be generically called its "removal" or "remedial" provisions. CERCLA's implementing regulations, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), detail the procedures and standards that must be followed in remediating these sites. For more information on NCP, see Executive Order (E.O.) 12580, which is presented in full text in Appendix C and summarized in Section D.3 of this chapter.

CERCLA identifies the classes of parties liable under CERCLA for the cost of responding to releases of hazardous substances. In addition, CERCLA contains provisions specifying when releases of hazardous substances must be reported and the procedures to be followed for the clean up of Federal installations. E.O. 12580, *Superfund Implementation*, delegates the President's CERCLA authorities to the heads of various Federal agencies. E.O. 12580 delegates most response authorities to EPA and the U.S. Coast Guard. However, authority to address releases at Federal facilities is generally delegated to the head of the Federal agency with jurisdiction over the Federal facility. The Order requires agencies to assume certain duties such as participating on national/regional response teams and providing opportunity for public comment before a remedial action plan is adopted.

E.O. 12580 was amended in 1996 by E.O. 13016, which delegated certain CERCLA abatement and settlement authorities to other Federal agencies. E.O. 12580 and E.O. 13016 are discussed further in Section D.3 of this chapter and are presented in full text in Appendix C. The statute can be found at 42 U.S.C. §9601 et seq. Regulations addressing environmental cleanup and response are in 40 CFR Parts 300-311, 355, and 373. Federal facility responsibilities under CERCLA are listed in the box below, and on the next page.

FEDERAL FACILITY RESPONSIBILITIES UNDER CERCLA INCLUDE:

Hazardous Substance Release

- Manage hazardous substances properly to avoid spills and releases
- Report hazardous substance releases to the National Response Center
- Establish necessary contracts, cooperative agreements, or interagency agreements (IAGs) to conduct cleanup activities

FEDERAL FACILITY RESPONSIBILITIES UNDER CERCLA INCLUDE: (continued)

Cleanup Activities

- Conduct site investigations, assessments, and cleanup actions
- Perform required community relations activities throughout the cleanup process
- Implement operation and maintenance activities
- Negotiate and maintain cleanup schedules in conformance with IAGs
- Conduct 5-year reviews of remedial actions
- Maintain institutional controls, such as land and water use restriction and well drilling prohibitions

Property Transfer and Disposal

- Identify "uncontaminated" property with concurrence of EPA or the State, as appropriate
- Provide notification to States of certain leases
- Provide notice of storage, release, or disposal of hazardous substances as required by 40 CFR Part 373
- Warrant that all necessary remedial action has been taken
- Warrant that any response action or corrective action found to be necessary after the date of sale or transfer will be conducted by the United States
- Retain access rights to the property for purposes of conducting required response action or corrective action

a. CERCLA Summary

CERCLA authorizes the President to respond to releases or threatened releases of hazardous substances into the environment. CERCLA authorities complement those of the Resource Conservation and Recovery Act which primarily regulates ongoing hazardous waste handling and disposal.

CERCLA's primary emphasis is the cleanup of hazardous substances releases. The major provisions of CERCLA response authority can be grouped under two general authorities: enforcement and the Hazardous Substance Superfund (hereinafter "Superfund" or "Fund"). Each of these general authorities is summarized below.

Response Authorities

There are two basic ways to respond to a release: by a removal or a remedial action. Under CERCLA §101(23), "removal" is defined to include a broad range of actions. Under CERCLA §101(24), "remedial" means actions consistent with permanent remedy taken instead of, or in addition to, removal actions.

Enforcement

EPA has three basic options under CERCLA when confronting a situation requiring a response. EPA may conduct the response itself and seek to recover its costs from the Potentially Responsible Parties (PRPs) in a subsequent cost-recovery action, it can compel PRPs to perform the cleanup themselves through either administrative or judicial proceedings, or it can enter into a settlement with PRPs to perform all or portions of the work. The following illustrates the four central elements of CERCLA's enforcement scheme:

< Authority permitting government and private entities to recover their response costs;

< Authority permitting EPA to seek a judicial order requiring a PRP to abate an endangerment to public health or welfare or the environment;

< Authority permitting EPA to take administrative actions compelling private parties to undertake actions necessary to abate endangerments; and

< Authority permitting EPA to negotiate settlements with private parties to undertake actions necessary to abate endangerments.

There also are authorities allowing private parties and States to bring "citizens suits" to enforce CERCLA's provisions and for natural resource trustees to bring actions for damages to natural resources. The specific statutory provisions for each of these authorities are listed in Section c of this chapter.

Trust Fund

The third general area of CERCLA authority concerns the Hazardous Substance Superfund (the "Fund" or "Superfund"), which provides financing for cleanup and enforcement actions. The Fund consists of monies generated by taxes imposed upon the petroleum and chemical industries. The Fund is used primarily to pay for EPA's cleanup and enforcement expenses. Although the goal is to have polluters pay all these expenses, EPA often must use Fund monies to clean up sites where there are no PRPs or to respond expeditiously to a release with the intention that these expenditures will be reimbursed later through cost-recovery actions. In addition to providing up-front funding to EPA, the Fund may be used to reimburse private party expenses in certain specified situations.

b. Application of CERCLA to Federal Facilities

CERCLA §120 discusses CERCLA's applicability to Federally-owned or Federally-operated facilities. Section 120 states the general principle that Federal agencies must comply with substantive and procedural CERCLA requirements to the same extent as private entities and are subject to §107 liability. These requirements are very extensive, but the following sequence of events generally applies to all sites, both privately and Federally-owned or operated: preliminary assessment, site investigation, listing on the National Priorities List (NPL), remedial investigation, feasibility study, record of decision, remedial design, remedial action, and (if applicable) long-term

operation and maintenance. Another important CERCLA requirement is that a remedy selected at a Federal facility, as with private sites, must meet CERCLA's cleanup standards, including compliance with Federal and State Applicable or Relevant and Appropriate Requirements (ARARs), which is one of the nine remedy selection criteria required by the NCP.

In addition to making Federal facilities subject to the same CERCLA mandates that apply to private parties, CERCLA §120 imposes additional requirements on Federal facilities. CERCLA also contains a waiver of sovereign immunity to permit individuals and States to bring "citizens suits" if an agency is not adhering to a CERCLA mandate. The statutory authorities and requirements that relate to Federal facilities are discussed below.

§120(a): General Application of CERCLA Authority to the Federal Government[2] - With certain exceptions specified in §120(a), each Federal agency shall be subject to CERCLA to the same extent as a private entity, including liability.

Subject to the exceptions specified in §120(a)(3), such as bonding, insurance or financial responsibility, Federal agencies shall comply with all guidelines, rules, regulations, and criteria related to removal and remedial actions and shall not adopt guidelines inconsistent with those established by the EPA Administrator.

When a Federal facility is not on the NPL, State laws concerning removal and remedial actions, including State laws regarding enforcement, apply to Federal facility actions as long as the State law is not more stringent for Federal facilities than for private facilities.

§120(b): Notice of Contamination That Affects Adjacent Property - Each Federal agency shall add to the Solid Waste Disposal Act §3016(a)(3) inventory information on Federal facility contamination that affects contiguous or adjacent property. Information added to the inventory shall include a description of the monitoring data obtained.

§120(c): Federal Agency Hazardous Waste Compliance Docket - EPA shall establish a docket listing facilities that manage hazardous wastes or have potential hazardous waste problems. Also, EPA shall publish in the *Federal Register* (FR) a list of Federal facilities that have been added to the docket recently.

§120(d): Assessment and Evaluation of Federal Facilities on the Docket - EPA shall take steps to ensure that a Preliminary Assessment (PA) is conducted for each Federal facility on the docket. After the PA, EPA, where appropriate, shall evaluate facilities for inclusion on the NPL. In determining whether to include a Federal facility on the NPL, EPA shall use the same criteria used for private sites. EPA also may consider whether the facility has an arrangement to clean up the facility under a non-CERCLA authority. EPA shall evaluate any facility on the docket that is the subject of a petition from the Governor of a State. For more information on NPL listing and deleting

[2]Headings for this summary of §120 do not strictly follow the subtitles found in the statute.

of Federal facilities see *The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing and Deletion Policy for Federal Facilities* (November 24, 1997).

§120(e): Steps Required for Remedial Actions at Federal Facilities Listed on the NPL - Within 6 months of inclusion on the NPL the Federal agency must commence a Remedial Investigation/ Feasibility Study (RI/FS) to determine the nature and extent of contamination.

Within 180 days after review of the RI/FS, the agency head shall enter into an interagency agreement (IAG) with EPA that includes a schedule for the expeditious completion of all necessary remedial actions at the Federal facility and arrangements for long-term operation and maintenance.

All IAGs also shall include a review of alternative remedial actions and selection of the remedial action by the Federal agency or, if unable to reach agreement, selection by the EPA Administrator. All IAGs shall comply with the public participation requirements of CERCLA §117.

Each Federal agency shall report annually to Congress on the agency's progress in implementing CERCLA's Federal facilities cleanup requirements.

If EPA determines, in consultation with the head of the affected agency, that an RI/FS or remedial action will be done properly and in a timely manner by a PRP other than the Federal agency, EPA may enter into a settlement agreement with that PRP under CERCLA §122 (relating to settlements).

§120(f): State and Local Participation - EPA and each agency, department, and instrumentality shall provide State and local officials with an opportunity to participate in the planning and selection of a remedial action. State and local participation shall include review of applicable data as it becomes available and the development of studies, reports, and action plans.

§120(g): Transfer of EPA's Authority to Federal Agencies - Except for authorities delegated by the EPA Administrator to an officer or employee of EPA, authorities vested in EPA by §120 cannot be transferred to other U.S. officials or to any other person.

§120(h): Property Transferred by Federal Agencies - Under CERCLA §120(h)(1), any contract for the sale or other transfer (e.g., leases) of property owned by the United States on which any hazardous substance was stored for 1 year or more, known to have been released, or disposed of, shall include a notice of the type and quantity of any hazardous substances on the property and notice of the time at which hazardous substances were stored, released, or disposed on the property.

CERCLA §120(h) was amended by the Community Environmental Response Facilitation Act (CERFA) which added three main provisions to CERCLA §120(h)(3): 1) amendment addressing the content of deeds (§120(h)(3)), 2) identification of uncontaminated property (§120(h)(4)), and 3) notification of States regarding certain leases (§120(h)(5)). Each of these provisions is summarized on the following page.

Under CERCLA §120(h)(3), deeds that transfer U.S. property to another person or entity must include the following:

< A description of any remedial action that was taken;

< A covenant warranting that remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the property has been taken prior to the date of transfer and any additional remedial action found to be necessary after the date of transfer shall be conducted by the United States. Under §120(h)(3), a remedial action "has been taken" when the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to EPA to be operating properly and successfully. Thus, long-term pumping or treating, or operation and maintenance after a remedy has been demonstrated to be operating properly and successfully, do not preclude the transfer of such property; and

< A clause granting the United States access to the property in the event that any additional remedial or corrective action is found to be necessary after the date of transfer.

The covenant described above shall not be required if the Federal agency is transferring the property to another PRP with respect to such property.

Under certain circumstances, contaminated property may be conveyed by deed before all remedial action has been taken. CERCLA §120(h)(3)(C) sets forth the conditions under which the EPA Administrator (with the concurrence of the Governor for property on the NPL) or the Governor (for property not on the NPL) may defer the requirement of providing a covenant that all necessary remedial action has been taken prior to the date of transfer. In such cases, once the United States has completed all remedial action, it must issue a warranty that satisfies that covenant requirement. A transferee of property conveyed under §120(h)(3)(C) also receives assurances at the time of transfer that all necessary remedial action will be taken in the future.

CERCLA §120(h)(4) requires that for any property on which Federal operations will be terminated and at bases that are closing or realigning, the Federal agency shall:

< Conduct an investigation to identify property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed.

< Obtain the concurrence of EPA (for property at NPL sites) or the State (for non-NPL sites) that such property is uncontaminated;

< Covenant that any response action or corrective action that may be required on the property subsequent to the sale or transfer will be conducted by the United States; and

< Retain access rights to the property for purposes of conducting required response action or corrective action.

The purpose of the investigation is to determine or discover the presence or likely presence of hazardous substances or petroleum products or their derivatives. At a minimum, it must include:

< Detailed search of Federal government records;

< Examination of recorded chain-of-title documents;

< Review of aerial photographs;

< Visual inspection of the property and of adjacent property;

< Physical inspection of adjacent property;

< Review of Federal, State, and local government records on adjacent facilities where there has been a release;

< Interviews with current or former employees; and

< Sampling, when appropriate.

The Federal agency must immediately provide the results of the investigation to EPA, State, and local government officials. The Federal agency also must make the results available to the public. The investigation is not complete until the appropriate regulatory concurrence is obtained.

CERFA contains statutory deadlines for the identification of uncontaminated property. The identification and concurrence for nonmilitary properties must occur at least 6 months before the termination of operations on the real property. For real property that is part of a military base that was slated for closure prior to CERFA's enactment, the identification and concurrence is to be completed within 18 months of CERFA's enactment (i.e., by April 19,1994). For real property on military bases designated for closing subsequent to CERFA, the identification and concurrence are to be completed within 18 months of the designation. Note: For property subject to Public Law 103-160, Base Closure Community Assistance Act, §2910 (November 30, 1993), concurrence may be mandated at an earlier point in time. The concurrence required under CERFA §120(h)(4)(b) shall be made not later than the earlier of 1) the date that is 9 months after the day of submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation or 2) the date specified in CERFA §120 (h)(c)(iii). In cases where Congress, through a joint resolution, disapproves of the closure or realignment, the identification of uncontaminated property and EPA/State concurrence must occur 18 months from the last possible date of Congressional disapproval. Finally, if the property was selected for closure or realignment after October 1992, identification and concurrence must occur within 18 months after the facility is selected for closure. For more information on base closure, see Section C.1 of this chapter.

Under CERCLA §120(h)(5), for property where hazardous substances or petroleum products or their derivatives have been stored for 1 year or more, known to have been released or disposed of, and on which the Federal government plans to terminate operations and enter into a lease that will encumber the property beyond the date of termination of operations, the Federal agency must provide notice of

the lease to the State in which the property is located. It is important to note that the covenant requirements of §120(h)(3)(A)(ii) do not apply to transfers by lease.

In §330 of the National Defense Authorization Act of FY 1993, Congress provided that the Secretary of Defense shall hold harmless and indemnify persons who acquire ownership or control of any facility at a military installation that is closing pursuant to a base closure law from any claim for personal injury or property damage that results from the release or threatened release of hazardous substances as a result of Department of Defense (DoD) activities. In addition, §1002 of the National Defense Authorization Act of FY 1994 expanded this provision by including releases of petroleum within the indemnification.

§111(e)(3): Uses of the Fund for Federal Facilities - Generally, no money in the Superfund shall be available for remedial actions at Federal facilities.

One exception is that Fund monies are available to provide alternative water supplies in any case involving groundwater contamination outside the boundaries of a Federal facility where the Federal facility is not the sole PRP.

CERCLA also allows the Fund to be used to finance Federal facility oversight and removal actions (including general investigation and enforcement) that may impact Federal facilities and other Superfund sites. However, E.O. 12580 requires the Fund to be reimbursed when used for removals at Federal facilities by the pertinent Federal agency.

§107: Natural Resources Damages - CERCLA and E.O. 12580, as amended by E.O. 13016, give Federal agencies significant authority over natural resources. CERCLA §107(a)(4)(C) provides liability for "damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release." The NCP designates as natural resource trustees the Secretaries of the Departments of Commerce, Interior, Agriculture, Defense, and Energy. Additionally, the heads of other Federal agencies, the States, and Tribal chairpersons may be natural resource trustees. These officials are to assess the natural resource damages for those resources under their trusteeship and may, upon request of and at the Federal officials' discretion, assess damages for those natural resources under the State's trusteeship. The NCP defines natural resources to include natural resources 1) over which the United States has sovereign rights and 2) within the territorial sea, contiguous zone, exclusive economic zone, and outer continental shelf belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States. The trustees' responsibilities include working with the National Response Team; and upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, conducting a preliminary survey to determine if trust resources are or potentially may be affected, cooperating with the On-Scene Coordinator/Remedial Project Manager, carrying out damage assessments, and devising and carrying out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources.

§106: Order Authority for Natural Resource Damages - Under E.O. 12580, as amended by E.O. 13016, Federal land management and natural resource trustee agencies obtained the authority to issue unilateral administrative cleanup orders under CERCLA §106. Under the amended Order, where a

release may present an imminent and substantial threat to public health or welfare or the environment, the Federal Resource Manager has the authority under §106 to issue administrative orders to seek relief with respect to a release or threatened release of a hazardous substance affecting either natural resources under a Federal Resource Manager's trusteeship, or a vessel or facility subject to the Federal Resource Manager's jurisdiction, custody, or control. However, E.O. 12580 requires the Federal Resource Managers to obtain EPA or Coast Guard concurrence before each exercise of §106 authority.

c. EPA Enforcement

EPA's primary enforcement authorities are set forth in §§104 and 106 of CERCLA. CERCLA §104 authorizes EPA to collect information from, and obtain access to, Federal facilities, including to issue orders compelling access and information. CERCLA §106 authorizes EPA to issue administrative orders for abatement actions. In addition to EPA's authority, with respect to a vessel or facility subject to its custody, jurisdiction, or control, the Department of Interior, the Department of Agriculture, DoD, and the Department of Energy (DOE) are allowed to issue §104 orders regarding information or access and §106 administrative orders with respect to any release or threatened release affecting natural resources under their trusteeship. EPA orders to Federal agencies require the concurrence of the U.S. Attorney General. Other executive agencies must obtain the U.S. Attorney General's concurrence on their §104 orders regardless of the recipient and must obtain EPA concurrence on §106 orders regardless of the recipient. States, Tribes, and citizens also can enforce CERCLA provisions as discussed below in Sections d, e, and f.

Interagency Agreements/Administrative Orders

CERCLA §120 requires EPA to enter an interagency agreement with Federal agencies to ensure cleanup under CERCLA at NPL sites. An interagency agreement provides the technical, legal, and management framework under which a response at the Federal facility is conducted. In particular, an interagency agreement specifies milestones for the Federal facility to complete remedial activities and stipulates penalties for missing milestones and includes arrangements for long-term operation and maintenance at the facility. Additionally, if deemed necessary, CERCLA §106 authorizes EPA to issue administrative orders.

Regarding criminal authority, sanctions may be sought against individual employees of Federal facilities for criminal violations of CERCLA. Criminal fines may be imposed either under CERCLA §103 or 18 U.S.C. §3571, the Alternative Fines Act. Enforcement of criminal violations is authorized under CERCLA §103 for knowing violations and the falsification or destruction of records.

< **§103(b)(3) -** Any person who fails to immediately notify the appropriate agency of the U.S. government of a hazardous substance release that exceeds a reportable quantity or who submits in such notification any information that the person knows to be false or misleading shall be fined in accordance with the applicable provisions of Title 18 of the United States Code (U.S.C.) or imprisoned for not more than 3 years, or both.

< **§103(c) -** Any person who knowingly fails to notify the EPA Administrator of the existence of a hazardous substance treatment, storage, and disposal facility that does not have either a RCRA permit or RCRA interim status shall be fined not more than $10,000 and/or imprisoned for not more than 1 year.

< **§103(d)(2) -** Any person who knowingly destroys, mutilates, erases, conceals, or falsifies records shall be fined in accordance with the applicable provisions of Title 18 of the U.S.C. or imprisoned for not more than 3 years (or not more than 5 years in the case of a conviction), or both.

Emergency Authority

Other than EPA, only the Coast Guard, DoD, and DOE possess emergency response authority under CERCLA. EPA, the Coast Guard, DoD, and DOE may perform response actions when there is an emergency.

d. State Enforcement

States may take a civil action against Federal facilities to enforce IAGs under CERCLA §310.

e. Tribal Enforcement

Section 126 of CERCLA requires that EPA afford Indian Tribes substantially the same treatment as a State. Tribal governments, like States, may take a civil action against Federal facilities to enforce IAGs under CERCLA §310.

f. Citizen Enforcement

CERCLA §310(a) allows citizens to file a civil action (civil suit) against any Federal agency that is alleged to be in violation of any CERCLA standard, regulation, condition, requirement, order, or IAG. In addition, CERCLA §310(a) allows citizens to file a civil action against the President or any other officer of the United States (including the EPA Administrator and the Administrator of the Agency for Toxic Substances and Disease Registry) for alleged failure to perform any non-discretionary act or duty.

CERCLA §310(d) excludes citizens from filing a civil action if the President has commenced and is diligently prosecuting an action under CERCLA or the Resource Conservation and Recovery Act to require compliance with a standard, regulation, condition, requirement, order, or IAG. In addition, CERCLA §310(d) precludes citizens from filing a suit until notification is given to the President, the State in which the alleged violation occurred, and the facility alleged to be in violation of a standard, regulation, condition, requirement, order, or IAG. Additional conditions and requirements pertaining to citizen suits are set forth in CERCLA §310(a) through (i).

g. EPA CERCLA Regulations

Federal CERCLA regulations are set forth in 40 CFR Parts 300-311, 355, and 373. Various sections of the CERCLA regulatory program are presented in the following box.

EPA CERCLA REGULATIONS

40 CFR 300	National Oil and Hazardous Substances Pollution Contingency Plan
40 CFR 302	Designation, Reportable Quantities, and Notification
40 CFR 303	Citizen Awards for Information on Criminal Violations Under Superfund
40 CFR 304	Arbitration Procedures for Small Superfund Cost Recovery Claims
40 CFR 305	CERCLA Administrative Hearing Procedures for Claims Against the Superfund
40 CFR 307	CERCLA Claims Procedures
40 CFR 310	Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases
40 CFR 311	Worker Protection
40 CFR 355	Emergency Planning and Notification
40 CFR 373	Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property

h. EPA CERCLA Policies and Guidance

There are numerous EPA policy documents on various aspects of the Superfund program. Some of the more important policies are provided below.

EPA CERCLA POLICIES AND GUIDANCE

Agreement with the Department of Defense — Model Provisions for CERCLA Federal Facility Agreements, EPA (June 17, 1988)

Agreement with the Department of Energy — Model Provisions for CERCLA Federal Facility Agreements, EPA (May 27, 1988)

Application of the CERCLA Municipal Landfill Presumptive Remedy to Military Landfills (Interim Guidance) Quick Reference Fact Sheet, OSWER Directive No. 9355.0-67FS (December 1996)

Clarification of Interim Status Qualification Requirements for the Hazardous Components of Radioactive Mixed Waste, 53 FR 37045-37048 (September 23, 1988)

Commonly Asked Questions Regarding the Use of Natural Attenuation for Chlorinated Solvent Spills at Federal Facilities, joint U.S. EPA, Air Force, Army, Navy, and Coast Guard publication

EPA CERCLA POLICIES AND GUIDANCE (continued)

Community Relations in Superfund: A Handbook, EPA 540-R-92-009 (January 1992)

Compendium of CERCLA ARARs Fact Sheets and Directives, Directive No. 9347. 3-15 (1991)

Covenant Not to Sue Under SARA, Directive No. 9834.8 (July 10, 1987)

Enforceability of Section 120 Federal Facility Agreements, Department of Justice to U.S. Environmental Protection Agency (August 7, 1989)

EPA Policy for Innovative Environmental Technologies at Federal Facilities (August 19, 1994)

Evaluating Mixed Funding Settlements Under CERCLA, Directive No. 9834.9 (October 20, 1987)

Federal Facilities Negotiations Policy, Directive No. 9992.3 (August 10, 1989)

Federal Facilities Streamlined Oversight Directive, Directive No. 9230.0-75 (November 29, 1996)

Final Guidance: Improving Communications to Achieve Collaborative Decision-Making at DOE Sites, U.S. EPA/DoD (June 16, 1997)

Final Policy on Setting RI/FS Priorities, OSWER Directive No. 9200.3-11 (December 27,1990)

Final Report of the Federal Facilities Environmental Dialogue Committee: Consensus, Principals and Recommendations for Improving Federal Facilities Cleanup, U.S. EPA/FFRRO and Keystone Center (April 1996)

Guidance for Evaluation of Federal Agency Demonstrations That Remedial Actions Are Operating Properly and Successfully Under CERCLA Section 120(h)(3) (interim) (August 1996)

Guidance on Accelerating CERCLA Environmental Restoration at Federal Facilities, EPA/DOE/DoD (August 22, 1994)

Initiatives to Promote Innovative Technology in Waste Management Programs, OSWER Directive 9380.0-25 (April 29, 1996)

Interim Final Listing and Delisting Policy for Federal Facilities, 62 FR 62523 (November 24, 1997)

Land Use in the CERCLA Remedy Selection Process, OSWER Directive 9355.7-04 (May 25, 1995, and June 7, 1995, cover letter)

Memorandum: Coordination Between RCRA Corrective Action and Closure and CERCLA Site Activities (September 24, 1996)

Military Base Closure: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 120(h)(4) (March 27, 1997)

The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing and Deletion Policy for Federal Facilities, 62 FR 62523 (November 24, 1997)

EPA CERCLA POLICIES AND GUIDANCE (continued)

Policy for Superfund Compliance with the RCRA Land Disposal Restrictions, OSWER Directive 9347.1-02 (April 17, 1989)

Policy on CERCLA Enforcement Against Leaders and Government Entities That Acquire Property Involuntarily, PB-95-234-498 (1995)

Policy on Decommissioning of Department of Energy Facilities Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), U.S. EPA/DOE Fact Sheet (1995)

Policy on Recovering Indirect Cost in CERCLA Section 107 Cost Recovery Actions, Directive No. 9832.5 (June 27, 1986)

Policy Towards Landowners and Transferees of Federal Facilities (June 13, 1997)

RCRA Facility Assessment or Equivalent Investigation Requirements at RCRA Treatment and Storage Facilities (January 4, 1998)

Releasing Information to Potentially Responsible Parties at CERCLA Sites, Directive No. 9835.12 (March 1, 1990)

Response Actions at Sites with Contamination Inside Buildings, OSWER Directive 9360.3-12 (August 12, 1996)

Revised Procedures for Planning and Implementing Off-Site Response Actions (November 13, 1987)

Standardizing the De Minimus Premium (1995)

State Authorization to Regulate Hazardous Components of Radioactive Mixed Wastes, 51 FR 24504-24505 (July 3, 1986)

Transmittal of the Revised Model Comfort Letter Clarifying Liability Involving Transfers of Federally-owned Property (January 19, 1996)

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on CERCLA requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

RCRA, Superfund, and EPCRA Hotline: This Hotline is a publicly accessible service that provides up-to-date information on several EPA programs and provides copies of regulations that have appeared in the *Federal Register*. The Hotline responds to factual questions on Federal EPA regulations developed under the Resource Conservation and Recovery Act, including the Underground Storage Tank program, Superfund, Emergency Planning and Community Right-to-Know Act, and the Oil Pollution Act. The Hotline also provides information on Section 112(r) of the Clean Air Act and on Spill Prevention, Control, and Countermeasures regulations. To speak with Information Specialists about regulatory questions or to order documents, call the Hotline toll-free at 1-800-424-9346. In the Washington, D.C., area, call (703) 412-9810.

Superfund Docket: The Superfund Docket responds to requests for access to docket files and provides copies of *Federal Register* publications involving the Superfund program. Materials kept at the Superfund Docket include background data, comments on regulatory actions, *Federal Register* notices, transcripts of public hearings, support documents for regulatory decisions, correspondence/memoranda, administrative records, Superfund program directives, and Superfund rulemaking. To contact the Superfund Docket, call (703) 603-9232.

Hazardous Waste Docket: This Docket manages information concerning Federal facilities and their compliance activities and makes certain resource documents available. The Docket can be reached at (703) 603-9232.

Alternative Treatment Technology Information Center: The Center is a comprehensive information retrieval system containing data on alternative treatment technologies for hazardous waste. The bulletin board includes features such as news items, bulletins, and special interest conferences and is available free of charge to Federal, State, local, and private sectors involved in site remediation. The Center can be accessed through the National Technical Information Service at (919) 541-5742. For assistance in accessing the Center by modem, call (919) 541-5384.

National Response Center: The Center receives all reports of oil, hazardous chemical, biological, and radiological releases. The National Response Center distributes these reports to a predesignated Federal On-Scene Coordinator, who coordinates cleanup efforts, and other responsible Federal agencies. To contact the Center, call 1-800-424-8802. In the Washington, D.C., area, call (202) 267-2675.

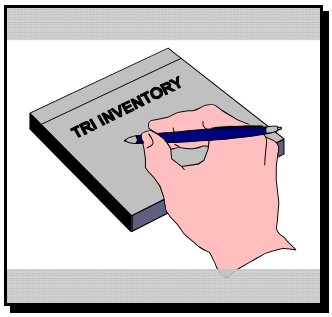
Office of Solid Waste and Emergency Response Home Page: http://www.epa.gov/epaoswer/

Federal Facilities Enforcement Office Home Page: http://es.epa.gov/oeca/fedfac/fflex.html

Federal Facilities Restoration and Reuse Office Home Page: http://www.epa.gov/swerffrr/

Superfund Home Page: http://www.epa.gov/superfund/

4. Emergency Planning and Community Right-to-Know Act



Overview: The Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA), was enacted on October 17, 1986. EPCRA requires States to establish a process for developing local chemical emergency preparedness programs and to receive and disseminate information on hazardous chemicals present at facilities within local communities. EPCRA also requires EPA to establish a publicly available toxic chemical release inventory consisting of facility-specific chemical release and waste management information. EPCRA has four major components: 1) emergency planning, 2) emergency release notification, 3) hazardous chemical inventory reporting, and 4) toxic chemical release inventory reporting. Each component has its own facility and chemical substance reporting requirements. The information submitted by facilities under these four reporting requirements allows States and local communities to develop a broad perspective of chemical hazards for the entire community and for individual facilities.

Executive Order (E.O.) 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*, requires Executive Branch agencies with facilities meeting the EPCRA definition of "facility" to comply with all provisions of EPCRA. For more information on E.O. 12856, see Chapter II, Section D.4 and Appendix C. The statute can be found at 42 U.S.C. §11001 et seq. The implementing regulations for EPCRA are found in 40 CFR Parts 302, 355, 370, and 372.

FEDERAL AGENCY RESPONSIBILITIES UNDER EPCRA AND EXECUTIVE ORDER 12856 INCLUDE:

- Notifying the State Emergency Response Commission (SERC) if a facility is producing, using, or storing any extremely hazardous substances (EHSs) in amounts equal to or greater than the established threshold planning quantity
- Designating a representative to participate in the local emergency planning process as a facility emergency response coordinator
- Notifying the SERC and the Local Emergency Planning Committee (LEPC) of releases of listed EHSs and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) hazardous substances that are not Federally permitted, exceed the established reportable quantity, and have the potential to result in exposure to persons off-site
- Providing written follow-up emergency notice to the SERC and LEPC
- Submitting copies of Material Safety Data Sheets (MSDSs) or a list of its hazardous chemicals grouped by hazard category to the SERC, LEPC, and local fire department

FEDERAL AGENCY RESPONSIBILITIES UNDER EPCRA AND EXECUTIVE ORDER 12856 INCLUDE: (continued)

, Submitting an emergency and hazardous chemical inventory form (Tier I or Tier II if requested by the SERC or LEPC) to the SERC, LEPC, and local fire department

, Submitting a toxic chemical release inventory reporting form (Form R or Form A) to EPA and the State

, Developing an agency-wide written pollution prevention strategy and a written pollution prevention plan for each covered facility

a. EPCRA Summary

EPCRA requires facilities to report information to Federal, State, and local authorities to facilitate emergency planning for chemical emergencies and to fulfill the citizens' right-to-know about chemicals present in their communities. Its principal objectives are to:

< Encourage and facilitate emergency planning for chemical accidents on the State and local level;

< Improve State and local response to releases of Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA) hazardous substances and extremely hazardous substances;

< Increase public knowledge and access to information regarding the presence of hazardous chemicals and extremely hazardous substances in their communities, and the health hazards associated with these chemicals; and

< Enhance public access to information on releases and off-site transfers of toxic chemicals in their communities.

To achieve these objectives, EPCRA establishes State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs). These entities are responsible for developing community plans to respond to chemical emergencies. SERCs and LEPCs receive annual inventory reports that document the amount and location of hazardous chemicals present at facilities and emergency release notifications for accidental releases of CERCLA hazardous substances and extremely hazardous substances. EPCRA also requires certain facilities to inventory all releases of toxic chemicals and report them annually to EPA and the appropriate State. All information

collected pursuant to the provisions of EPCRA is made available to the public. EPCRA contains four major sections:

< *Emergency Planning*: Provides SERCs with information on the presence of extremely hazardous substances and with other information necessary to support LEPCs in developing emergency plans for chemical accidents.

< *Emergency Release Notification*: Establishes procedures for alerting SERCs and LEPCs to releases of extremely hazardous substances or CERCLA hazardous substances in amounts equal to or greater than their designated reportable quantity (RQ).

< *Hazardous Chemical Inventory*: Notifies SERCs, LEPCs, and local fire departments of the location and hazards associated with Occupational Safety and Health Act (OSHA) hazardous chemicals in their community through the submittal of Material Safety Data Sheets (MSDSs) and annual inventory reports, also known as the Tier I and Tier II forms. The Tier I and Tier II forms document the quantity and location of hazardous chemicals within a facility.

< *Toxic Chemical Release Inventory*: Incorporates annual releases and transfers of listed toxic chemicals from certain facilities, including waste management information, into a publicly accessible national database.

The emergency planning provisions require all facilities that have an extremely hazardous substance (EHS) present in amounts equal to or greater than the threshold planning quantity (TPQ) to notify the SERC and provide additional information necessary for the LEPC to develop or implement a local emergency response plan. Facilities must immediately notify SERCs and LEPCs of releases of extremely hazardous substances or CERCLA hazardous substances that exceed an RQ within a 24-hour period. For more information on this requirement, see 40 CFR Part 355.

All facilities having OSHA hazardous chemicals present in amounts equal to or greater than 10,000 pounds, or extremely hazardous substances in amounts equal to or greater than the TPQ (or 500 pounds, whichever is lower) must submit MSDSs or a list of MSDSs grouped by hazard category to the SERC, LEPC, and the local fire department. The hazardous chemical inventory provisions also mandate the annual submission by March 1 of a Tier I or Tier II form to the SERC, LEPC, and local fire department for all hazardous chemicals exceeding the applicable threshold. The forms document the quantity, location, and hazards associated with the location of hazardous chemicals and extremely hazardous substances present at a facility. For more information on this requirement, see 40 CFR Part 370.

Finally, the Toxic Chemical Release Inventory (TRI) requires facilities within certain Standard Industrial Classification (SIC) codes and Executive Branch agencies with 10 or more full-time employees, who manufacture (including importing), process, or otherwise use listed toxic chemicals in excess of the applicable thresholds, to submit the TRI Form R annually by July 1 to EPA and the State. The threshold for manufacturing or processing a toxic chemical is 25,000 pounds per calendar year. The threshold for otherwise using a listed toxic chemical is 10,000 pounds per calendar year. Beginning with the 1995 reporting year, facilities that have an annual reportable amount of less than

500 pounds and who manufacture, process, or otherwise use less than 1 million pounds, may submit a shorter form, referred to as Form A, to EPA and the State instead of the Form R. For more information on this requirement, see 40 CFR Part 372. A facility's annual reportable amount is the sum of the toxic chemicals released on- and off-site, recycled on- and off-site, recovered for energy on- and off-site, and treated on- and off-site.

b. Application of EPCRA to Executive Branch Agencies Due to E.O. 12856

E.O. 12856 requires all Executive Branch agencies to comply with the provisions of EPCRA without regard to SIC code, establish voluntary goals, and develop plans for reducing and eliminating the use of extremely hazardous substances and toxic chemicals. In reaching these goals, each Federal agency must develop a pollution prevention strategy and ensure that each "covered facility" has developed a written plan. A "covered facility" is a Federal facility that meets one or more of EPCRA's threshold reporting requirements. These requirements are as follows:

< Presence of an extremely hazardous substance (EHS) at or above the TPQ (EPCRA §302);

< Release of an EHS or CERCLA hazardous substance at or above an RQ (EPCRA §304);

< Presence of 10,000 pounds of a hazardous chemical, unless an EHS, then 500 pounds or the TPQ, whichever is lower (EPCRA §§311-312); or

< 25,000 pounds/year (lbs/yr) for manufacturing or processing one or more listed toxic chemicals; or 10,000 lbs/yr otherwise using one or more listed toxic chemicals at a facility (the 25,000 and 10,000 lbs/yr requirements apply to facilities with 10 or more full-time employees or the equivalent) (EPCRA §313).

E.O. 12856 also requires Federal facilities to comply with the provisions of the Pollution Prevention Act (PPA). For more information on PPA, see Chapter III, Section A.

A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*; E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*; and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.

Additional Federal facility responsibilities mandated by E.O. 12856 are summarized below and on the following pages.

E.O. 12856 §3-301: Federal Agency Strategy - Each Federal agency must develop and submit to EPA a written pollution prevention strategy to achieve the goals specified in §§3-302 through 3-305 of E.O. 12856 by August 3, 1994. The strategy must identify the individual responsible for

coordinating pollution prevention efforts and must commit the agency to achieving pollution prevention through source reduction where practicable. For more information on pollution prevention, see Chapter III, Section A.

E.O. 12856 §3-302: Toxic Chemical Reduction Goals - Each Federal agency must establish voluntary goals to achieve a 50 percent reduction in releases and off-site transfers for disposal or treatment of toxic chemicals/pollutants by December 1999. The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal is the aggregate amount of toxic chemical releases and off-site transfers reported in the first year in which the agency's data are publicly reported. In most cases, the baseline year is reporting year 1994; however, the Department of Energy began reporting for 1993 which is their "baseline" year and other individual agencies may have begun voluntarily reporting earlier. Federal agencies must report annually to EPA on their efforts to achieve the 50 percent voluntary reduction goal.

All affected Federal facilities must develop a written pollution prevention plan that describes their contribution to their agency's voluntary reduction goals by December 31, 1995. The Order does not require that facility-specific pollution prevention plans be submitted to EPA.

E.O. 12856 §3-303: Acquisition and Procurement Goals - Federal agencies must develop a plan and goals for eliminating or reducing the unnecessary acquisition of products that contain extremely hazardous substances or toxic chemicals.

The Department of Defense, the General Services Administration, and other agencies, as appropriate, are required to review standardized documents such as specifications and standards and to identify opportunities to reduce or eliminate the unnecessary use of extremely hazardous substances and toxic chemicals. This review, to be completed by August 3, 1995, was based on priorities established in consultation with EPA. All appropriate revisions to these specifications and standards must be completed by 1999.

E.O. 12856 §3-304: Toxics Release Inventory/Pollution Prevention Act Reporting - Federal agencies must comply with EPCRA §313, which pertains to toxic chemical release forms, regardless of the SIC designation. Federal facilities that have 10 or more full-time employees and who manufacture (including importing), process, or otherwise use a toxic chemical in excess of the applicable threshold must report annually to EPA and the State.

E.O. 12856 §3-305: Emergency Planning and Community Right-to-Know Reporting Responsibilities - Federal agencies must comply with the reporting requirements of EPCRA §302, pertaining to emergency planning, by March 3, 1994. Federal facilities that have an EHS on-site in quantities equal to or greater than the TPQ must notify the SERC and designate a facility emergency coordinator to work with the LEPC to develop the LEPC's local emergency response plan.

Section 3-305 also requires Federal agencies to comply with EPCRA §304, pertaining to emergency release notification, by January 1, 1994. Federal facilities that release an EHS or a CERCLA hazardous substance in quantities equal to or greater than the RQ must notify the SERC and LEPC immediately.

Section 3-305 also requires Federal agencies to comply with EPCRA §311, pertaining to Material Safety Data Sheets (MSDSs), by August 3, 1994, and EPCRA §312, pertaining to emergency and hazardous chemical inventory forms, by March 1, 1995. Federal facilities that have OSHA hazardous chemicals in quantities equal to or greater than the applicable thresholds must submit MSDSs or a list of MSDSs and file a Tier I/II form annually to the SERC, LEPC, and local fire department.

E.O. 12856 §4-405: Federal Government Environmental Challenge Program - EPA must establish the "Federal Government Environmental Challenge Program," to establish the Code of Environmental Management Principles (CEMP) and to recognize outstanding environmental management and performance by Federal agencies, facilities, or their employees. For more information on CEMP, see Chapter IV, Section F.

E.O. 12856 §5-5: Compliance - EPCRA enforcement and penalty provisions are not applicable to Federal agencies or facilities.

Each Federal agency shall conduct internal reviews and audits to monitor compliance with EPCRA and E.O. 12856.

EPA may conduct reviews and inspections to monitor and ensure compliance with EPCRA provisions of E.O. 12856.

Federal agencies and facilities are encouraged to comply with all State and local right-to-know and pollution prevention requirements.

Whenever the EPA Administrator notifies a Federal agency that it is not in compliance with an applicable provision of the Order, the Federal agency must achieve compliance as promptly as practicable.

EPA is required to report annually on Federal agency compliance with the TRI provisions.

Federal agencies must make all strategies, plans, and reports required by EPCRA and E.O. 12856 available to the public.

E.O. 12856 §6-601: Exemption - Federal agencies may request an exemption from compliance with all or part of the E.O. 12856 in accordance with the procedures in §120(j)(1) of CERCLA.

c. EPA Enforcement

EPA's enforcement authorities against non-Federal entities are set forth in §325 of EPCRA, which authorizes EPA to assess civil and administrative penalties and bring judicial criminal actions against non-Federal violators. However, Federal agencies are not subject to the enforcement and penalty provisions of §325 of EPCRA. Similarly, Federal facilities are not subject to State, Tribal, and citizen enforcement as discussed below in Sections d, e, and f. When a Federal facility is in violation

of EPCRA, under §5-506 of E.O. 12856, EPA may provide written notification to the facility of the violation and the facility must achieve compliance as soon as practicable. Generally, a Federal Facility Compliance Agreement will be developed as described on the following page.

Federal Facility Compliance Agreements

EPA has developed guidance titled *Guidance on Process for Resolving E.O. 12856 and EPCRA Compliance Problems at Federal Facilities* (July 30, 1997) that establishes a process to resolve EPCRA compliance issues at Federal facilities. The process involves an escalating response scheme, including an initial compliance screening, informal notification to/response by the facility regarding its compliance status, an inspection, use of a show-cause letter requiring the facility to comply within 45 days, negotiation of a Federal Facility Compliance Agreement (if needed), and ultimately listing the facility in EPA's annual report to the President as being in violation of EPCRA and E.O. 12856. The guidance is discussed further in Chapter V.

Criminal Enforcement

Federal agencies are not subject to the enforcement and penalty provisions of EPCRA §325, including the criminal enforcement provisions.

Emergency Authority

EPCRA contains no emergency authority provision.

d. State Enforcement

Although under §326 of EPCRA, States and local governments have the authority to bring civil actions against violators of EPCRA, Federal agencies are not subject to EPCRA's civil suit provisions.

e. Tribal Enforcement

EPA has designated Indian Tribes as the implementing authorities for EPCRA on Indian lands. Tribal governments, therefore, have the same enforcement authority as States under §326 of EPCRA. However, Federal agencies are not subject to the civil suit provisions of §326 of EPCRA.

f. Citizen Enforcement

Under §326 of EPCRA, citizens have the authority to file civil actions against violators of EPCRA. However, Federal agencies are not subject to the civil suit provisions of §326 of EPCRA.

g. EPA EPCRA Regulations

EPCRA regulations are set forth in 40 CFR Parts 302, 355, 370, and 372. The various provisions of the EPCRA regulatory program are listed on the following page.

EPA EPCRA REGULATIONS

40 CFR 300.215	Title III Local Emergency Response Plans
40 CFR 302.4	List of Hazardous Substances and Reportable Quantities
40 CFR 355.30	Emergency Planning
40 CFR 355.40	Emergency Release Notification
40 CFR 355	Appendix A--List of Extremely Hazardous Substance (Threshold Planning Quantities and Reportable Quantities)
40 CFR 370.21	Material Safety Data Sheet Reporting
40 CFR 370.25	Hazardous Chemical Inventory
40 CFR 372	Toxic Chemical Release Reporting: Community-Right-to-Know
40 CFR 372.65	List of Toxic Chemicals

h. EPA EPCRA Policies and Guidance

There are many EPA policy documents on various aspects of EPCRA and E.O. 12856. Selected EPCRA fact sheets, regulations, and guidance documents are presented in the box below.

EPA EPCRA POLICIES AND GUIDANCE

Common Synonyms for Chemicals Listed Under Section 313 of the Emergency Planning Community Right-To-Know Act, EPA 745-R-95-008 (March 1995)

Compliance with the Emergency Planning and Community Right-to-Know Act of 1986 as Required Under E.O. 12856, Questions and Answers, EPA 745-R-95-011 (March 21, 1995)

Estimating Releases and Waste Treatment Efficiencies for the Toxic Chemical Release Inventory Form, EPA 560-4-88-002 (December 1987)

Executive Order 12856: Federal Facility Outreach Guide, EPA 745-B-96-001 (August 1996)

Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, EPA 300-B-95-005 (March 28, 1995)

Federal Facility Pollution Prevention Guide, EPA 300-B-94-013 (December 1994)

Guidance for Implementing Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, EPA 300-B-95-005 (March 28, 1995)

Guidance on Process for Resolving E.O. 12856 and EPCRA Compliance Problems at Federal Facilities (July 30, 1997)

Pollution Prevention in the Federal Government, EPA 300-B-94-007 (April 1994)

Title III Lists of Lists, EPA 550-B-96-015 (December 1996)

Toxic Chemical Release Inventory Form R and Instructions, EPA 745-K-97-001 (May 1995)

Toxic Chemical Release Inventory Questions and Answers, EPA 560-4-91-003 (January 1991)

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on EPCRA requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

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Chemical Emergency Preparedness Prevention Office Home Page: http://www.epa.gov/swercepp/crtk.html. This Home Page lists relevant fact sheets, regulations, and guidance documents relating to the EPCRA emergency planning, emergency release notification, and hazardous chemical inventory reporting requirements.

Office of Pollution Prevention and Toxics—Toxics Release Inventory Home Page: http:// www.epa.gov/opptintr/tri/. This Home Page provides a description of what TRI is, how TRI data can be accessed and used, and a description of TRI program development initiatives. The Home Page also provides downloadable copies of the TRI forms, reporting instructions, and guidance documents.

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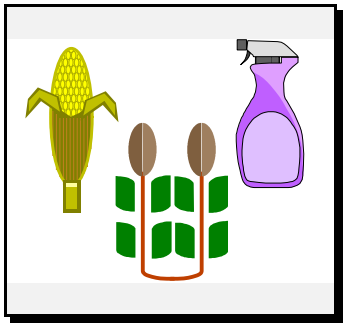
5. Federal Insecticide, Fungicide, and Rodenticide Act



Overview: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulates the sale and use of pesticides in the United States. FIFRA, as it was originally enacted in 1947, required that pesticides distributed in interstate commerce be registered with the U.S. Department of Agriculture (USDA) and established a rudimentary set of labeling provisions. The Federal Environmental Pesticide Control Act amended FIFRA in 1972. These amendments 1) strengthened the enforcement provisions of FIFRA; 2) broadened the legal emphasis from ensuring labeling to protecting health and the environment through a comprehensive regulatory scheme that includes regulation of pesticide use; 3) extended the scope of Federal law to cover intrastate registrations; and 4) streamlined the administrative appeals process. FIFRA's enforcement efforts focus on the distribution and use (which includes disposal) of pesticides. Before a pesticide can be sold or distributed in the United States, FIFRA requires that registration (a type of license) be obtained from EPA. When making a registration decision, EPA must determine that the pesticide, when used in accordance with label directions, will not cause unreasonable adverse effects to human health or the environment. The prime duty of the user is to comply with all use instructions on the pesticide label or accompanying labeling. Failure to follow label directions is dangerous and illegal. Congress enacted subsequent amendments to FIFRA in 1975, 1978, 1980, 1988, and 1996. Elements of FIFRA are implemented by regulations for registration and re-registration of pesticides, pesticide usage, the removal of unsafe pesticides from the market, administrative and judicial reviews, protection of workers, and exports and imports. The statute can be found at 7 U.S.C. §136 et seq. Federal pesticide regulations are set forth in 40 CFR Parts 150-189.

FEDERAL FACILITY RESPONSIBILITIES UNDER FIFRA INCLUDE:

- Properly following labeling instructions
- Ensuring that applicators are properly trained and, where necessary, certified to use restricted use pesticides and are using appropriate personnel protective equipment
- Properly managing pesticide storage facilities
- Disposing of pesticide residues and waste in accordance with required and recommended procedures
- Maintaining records of pesticide applications

a. FIFRA Summary

FIFRA is the Federal statute that governs the registration, distribution, sale, and use of pesticides in the United States. A pesticide is defined as any substance or mixture of substances intended for

preventing, destroying, repelling, or mitigating any pest, and any nitrogen stabilizer substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. Originally, FIFRA was administered by USDA, which monitored the efficacy claims of manufacturers through a registration program. FIFRA's initial intent was to protect farmers by requiring accurate labeling of pesticide contents, thereby enabling farmers to make informed choices regarding the product's effectiveness. In 1970, with the formation of EPA, responsibility for administering FIFRA transferred from USDA to EPA.

Concerns regarding the toxic effects of pesticides and residues on applicators, non-target species, the environment, and food prompted significant changes in the original FIFRA legislation. Subsequent amendments resulted in the current statute. The primary objective of FIFRA is to ensure that, when applied as instructed, pesticides will not generally cause unreasonable risk to human health or the environment. To reach this objective, FIFRA includes provisions that require EPA to establish several programs, which are summarized below.

Labeling (40 CFR Part 156)

All registered pesticide products must display labels that show the following information clearly and prominently: 1) the name, brand, or trademark under which the product is sold; 2) the name and address of the producer or registrant; 3) net contents; 4) product registration number; 5) producing establishment's number; 6) ingredient statement; 7) warning or precautionary statements; 8) directions for use; and 9) use classification.

EPA has, by regulation, promulgated various requirements pertaining to pesticide labels. These regulations have requirements for warning statements and mandate that pesticide products have adequate use directions. Labels may include, for example, instructions requiring the wearing of protective clothing, handling instructions, and instructions setting a period of time before workers are allowed to re-enter fields after the application of pesticides. For more information on labeling requirements, see 40 CFR Section 156.10(h) and (i).

Packaging (40 CFR Part 157)
Child Safety Regulations

Since 1981, FIFRA has required most residential-use pesticides with a signal word of "danger" or "warning" to be in child-resistant packaging (CRP). CRP is designed to prevent most children under 5 years old from gaining access to the pesticide, or at least delay their access. FIFRA §25(c)(3) authorizes EPA to establish standards with respect to the package, container, or wrapping in which a pesticide or device is enclosed to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated under FIFRA. Additionally, §25(c)(3) requires EPA's CRP standards to be consistent with those established under the Poison Prevention Packaging Act of 1970.

Worker Protection Standards (40 CFR Part 170)

Facilities that handle pesticides must adopt workplace practices designed to reduce or eliminate exposure to pesticides and must establish procedures for responding to exposure-related emergencies. FIFRA prohibits registration of pesticides which generally pose unreasonable risks to people, including agricultural workers, or the environment. EPA uses two primary resources to protect agricultural workers: 1) pesticide-specific restrictions and label requirements and 2) the broadly applicable Worker Protection Standards (WPS). If EPA believes the risks to workers posed by a pesticide are excessive, it can take actions such as requiring additional label warnings or requiring labeling that mandates use of protective clothing. The WPS specifically address how to reduce the risk of illness or injury resulting from occupational exposures to pesticides used in the production of agricultural plants on farms, in nurseries, in greenhouses, and in forests, and from the accidental exposure of workers and other persons to such pesticides. The standards establish ventilation criteria, entry restrictions, personal protective equipment guidelines, and information display requirements.

Registration of Pesticides (§3)

No person in any State may distribute or sell to any person any pesticide that is not registered pursuant to §3 of FIFRA. EPA may, by regulation, limit the distribution, sale, or use in any State of any pesticide that is not registered and that is not the subject of an experimental use permit under §5 of FIFRA or an emergency exception under §18 of FIFRA.

Experimental Use Permits (§5)

EPA has the authority to issue permits to applicants for conducting tests that are needed to collect the information necessary to register a pesticide. States can submit a plan to EPA to receive authorization to issue experimental use permits. States cannot issue permits for pesticides suspended or canceled by EPA.

Use of Restricted Use Pesticides—Applicators (§11)

Another action that EPA may take is to classify a pesticide as a “restricted use” pesticide, which means that the pesticide may be used only by or under the supervision of a certified pesticide applicator. All applicators of restricted use registered pesticides must be certified. Certification is a statement by the certifying agency that the applicator is competent and authorized to use or supervise the use of restricted pesticides. EPA establishes the certification standards, but any State with a State Certification Plan approved by EPA can establish its own program, if the program meets EPA standards. Each State must submit a plan for applicator certification to the EPA Administrator for approval. If EPA does not approve the plan, then EPA conducts the certification program for all applicators of registered pesticides.

Exemption of Federal and State Agencies (§18)

EPA may exempt any Federal or State agency from any provision of FIFRA if the EPA Administrator determines that emergency conditions that require such an exemption exist.

Storage, Disposal, Transportation, and Recall (§19)

FIFRA stipulates that EPA has the authority to establish regulations and procedures regarding pesticide storage and disposal. Section 19 of FIFRA authorizes EPA to collect information and establish requirements for the storage, disposal, transportation, and packaging of pesticides. The objective of the regulations and recommendations is to provide procedures for storage, disposal, and transportation that adequately protect public health and the environment. FIFRA disposal regulations are implemented rarely and only in the context of risk-based and time-limited cancellations. Pesticide wastes generally are subject to the requirements of the Resource Conservation and Recovery Act.

Authority of States (§24)

A State may regulate the sale or use of any registered pesticide within the State. However, the regulation on the sale and use of the pesticide must not permit any sale or use prohibited by FIFRA. Also, the State shall not impose any requirements for labeling or packaging in addition to, or different from, those imposed by FIFRA.

A State may register additional uses of a Federally-registered pesticide within the State to meet local needs unless such use has previously been denied, disapproved, or canceled by EPA.

b. Application of FIFRA to Federal Facilities

EPA has oversight responsibility for the regulation of pesticide use in most States and primary responsibility in those States where all or part of the pesticide program has not been delegated. Amendments to FIFRA have delegated responsibility and authority to States for training, registration, and enforcement. Any Federal agency which seeks relief from any FIFRA requirement in an emergency condition must request an exemption pursuant to §18 of FIFRA. Federal employees who apply restricted use pesticides must be certified as commercial applicators based on the type of application they will use. Situations where Federal facility staff might wish to apply a restricted use pesticide include 1) a structure to limit the control of pests such as rodents or cockroaches; 2) ground areas or water to control weeds, insects, or mosquitos; or 3) food handling areas to control bacteria. Under the 1996 amendments to FIFRA, Federal agencies are instructed to use Integrated Pest Management (IPM) techniques to promote IPM activities such as procurement and regulations.

40 CFR 171.9: Government Agency Plan - Federal agencies that conduct pesticide applications in more than one State must prepare a Government Agency Plan (GAP) determining and attesting to the competency of Federal employees whose duties require them to use or supervise the use of restricted use pesticides. A GAP does not relieve Federal employees from meeting State certification

requirements. The State lead agency will review credentials issued under a GAP and may issue reciprocal credentials or require the employees to go through the State certification process.

c. EPA Enforcement

EPA's enforcement authorities are set forth in FIFRA §13 and §14. Section 13 addresses EPA's authority to issue a "stop sale," use, or removal order whenever a pesticide or device is found to be in violation of FIFRA requirements. Section 14(b) of FIFRA pertains to the assessment of criminal penalties for violations of FIFRA and its implementing regulations. EPA prohibits the sale and distribution of unregistered, adulterated, or misbranded pesticides and the use of any registered pesticide in a manner inconsistent with its labeling. To enforce FIFRA requirements, EPA conducts producer establishment inspections, marketplace surveillance, and pesticide sampling and analysis. Historically, EPA has not assessed civil penalties against Federal agencies for violations of FIFRA. As a matter of practice, given the current state of the law, EPA does not intend to pursue such penalties. In addition to EPA's enforcement authority, States are authorized under FIFRA to enforce FIFRA requirements as discussed below in Section d.

Federal Facility Compliance Agreements

Typically, EPA will negotiate a Federal Facility Compliance Agreement with Federal agencies that are in violation of FIFRA requirements. The compliance agreement contains several provisions including, but not limited to, a schedule for achieving compliance and dispute resolution.

Criminal Enforcement

< **§14(b)(1): Criminal Penalties: In general -** Any registrant, applicant for a registration, or producer who knowingly violates any provision of FIFRA is subject to a fine of not more than $50,000 and/or imprisonment not to exceed 1 year. Any commercial applicator of a restricted use pesticide; or any other person not described previously who distributes or sells pesticides, who knowingly violates any provision of FIFRA is subject to a fine of not more than $25,000 and/or imprisonment not to exceed 1 year.

< **§14(b)(2): Criminal Penalties: Private applicator -** Any private applicator who knowingly violates any provision of FIFRA is subject to a fine of not more than $1,000 and/or imprisonment not to exceed 30 days.

Federal employees also may be subject to other State and local criminal penalties. Additionally, criminal fines may be imposed under 18 U.S.C. §3571, the Alternative Fines Act.

Emergency Authority

Section 6(c) of FIFRA provides for the suspension of a pesticide registration if the Administrator determines it is necessary to prevent an imminent hazard. Section 13(a) of FIFRA provides for the issuance of a stop sale, use, removal, and seizure order under circumstances outlined in the statute. FIFRA contains no emergency authority provision.

d. State Enforcement

Under FIFRA §26, a State shall have primary enforcement responsibilities for pesticide use violations if EPA determines that such State has adopted and is implementing adequate pesticide use laws and regulations, enforcement procedures, and recordkeeping and reporting requirements. Under FIFRA, States have broad authority to regulate pesticides; however, it is unlawful for States to impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under FIFRA. For more information on this limitation, see 7 U.S.C. §136 V(b).

e. Tribal Enforcement

FIFRA does not specifically address Tribal enforcement of FIFRA regulations. However, under FIFRA, and at the discretion of EPA, a limited Tribal role similar to the State's role may be allowed (see 40 CFR §171.10, Certification of Applicators on Indian Reservations).

f. Citizen Enforcement

FIFRA contains no citizen enforcement provisions.

g. EPA FIFRA Regulations

EPA FIFRA regulations are set forth in 40 CFR Parts 152-186. The various sections of the FIFRA regulatory programs are outlined in the following box.

EPA FIFRA REGULATIONS

40 CFR 152	Pesticide Registration and Classification Procedures
40 CFR 153	Registration Policies and Interpretations
40 CFR 154	Special Review Procedures
40 CFR 155	Registration Standards
40 CFR 156	Labeling Requirements for Pesticides and Devices
40 CFR 157	Packaging Requirements for Pesticides and Devices
40 CFR 158	Data Requirements for Registration
40 CFR 160	Good Laboratory Practice Standards
40 CFR 162	State Registration of Pesticide Products
40 CFR 163	Certification of Usefulness of Pesticide Chemicals
40 CFR 164	Rules of Practice Governing Hearings, Under the Federal Insecticide, Fungicide, and Rodenticide Act, Arising From Refusals to Register, Cancellations of Registrations, Changes of Classifications, Suspensions of Registrations, and Other Hearings Called Pursuant to Section 6 of the Act
40 CFR 165	Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers
40 CFR 166	Exemption of Federal and State Agencies for the Use of Pesticides Under Emergency Conditions

EPA FIFRA REGULATIONS (continued)

40 CFR 167	Registration of Pesticide and Active Ingredients Producing Establishments, Submission of Pesticide Reports
40 CFR 168	Statements of Enforcement Policies and Interpretations
40 CFR 169	Books and Records of Pesticide Production and Distribution
40 CFR 170	Worker Protection Standards
40 CFR 171	Certification of Pesticide Applicators
40 CFR 172	Experimental Use Permits
40 CFR 173	Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations
40 CFR 177	Issuance of Food Additive Regulations
40 CFR 178	Objections and Requests for Hearings
40 CFR 179	Formal Evidentiary Public Hearing
40 CFR 180	Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities
40 CFR 185	Tolerances for Pesticides in Food
40 CFR 186	Tolerances for Pesticides in Animal Feeds

h. EPA FIFRA Policies and Guidance

There are many guidance documents and policies covering various aspects of FIFRA. A partial list of available FIFRA publications is provided in the box below. The FIFRA docket houses documents supporting FIFRA rulemakings and can provide referrals to other information pertaining to FIFRA.

EPA FIFRA POLICIES AND GUIDANCE

Catalog of OPP Publications and Other Information Media, EPA 730-B-95-001 (1995)

Do You Really Need a Pesticide?, EPA 910-F-94-004

EPA's Pesticide Programs, EPA 21T-1005 (May 1991)

FY 95 Pesticides/Toxics Grant Guidance (1995)

Highlights of the 1988 Pesticide Law: The Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1988, EPA 540-S-89-900 (1989)

How to Obtain Information From EPA's Office of Pesticide Programs, EPA 735-F-96-004

Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Defense with Respect to Integrated Pest Management (March 20, 1996)

Pesticide Enforcement, EPA 300-F-96-010 (Spring 1996)

Pesticide Regulation Notice 96-4: Label Statements Involving Product Efficacy and Potential for Harm to Property, EPA 730-N-96-002 (June 3, 1996)

EPA FIFRA POLICIES AND GUIDANCE (continued)

Pesticide Re-registration Progress Report, EPA 783-R-94-001 (January 1994)

Protect Yourself From Pesticides: Guide for Pesticide Handlers, EPA 735-B-93-003 (December 1993)

Suspended, Canceled, and Restricted Pesticides, EPA 20T-1002 (February 1990)

Worker Protection Standard for Agricultural Pesticides: How to Comply, What Employers Need to Know, EPA 735-B-93-001

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on FIFRA requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

National Pesticide Telecommunications Network: The toll-free National Telecommunications Network provides toxicological profiles, referrals to EPA offices, and additional resources on pesticides. To contact the Network, call 1-800-858-PEST (general public) or 1-800-858-7377 (medical and government personnel).

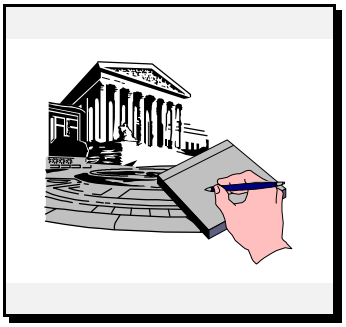
Pesticide Docket: This Docket provides access to documents supporting FIFRA rulemaking and can provide referrals to other FIFRA information services. The Pesticide Docket consists of the *Federal Register* Docket, the Special Review, and Special Program Dockets. To contact the Pesticide Docket, call (703) 305-5805.

Pesticide Registration: To obtain information on registering pesticides, call the EPA Pesticide Registration Division at (703) 305-5447.

Office of Pesticide Programs Home Page: http://www.epa.gov/pesticides/

Office of Prevention, Pesticides, and Toxic Substances Home Page:
http://www.epa.gov/internet/oppts/

6. National Environmental Policy Act



Overview: Since its enactment on January 1, 1970, the National Environmental Policy Act (NEPA) has ensured that Federal agency decisionmaking takes environmental factors into consideration. NEPA is generally only applicable to Federal agencies and Federal actions; however, State, local, and private entities need to comply with NEPA when they are involved in Federal actions. NEPA was enacted to 1) encourage harmony between people and the environment, 2) promote efforts to prevent or eliminate damage to the environment and the biosphere, and 3) enrich the understanding of ecological systems and natural resources. NEPA requires that an environmental impact statement (EIS) be performed to consider the environmental effects of, and any alternatives to, all proposals for major Federal actions that significantly affect the quality of the human environment. NEPA's effectiveness has been attributed to the EIS requirement. NEPA is divided into two titles: Title I - Congressional Declaration of National Environmental Policy, and Title II - Council on Environmental Quality. The NEPA statute is found at 42 U.S.C. §4321 et seq. NEPA regulations are set forth in 40 CFR Parts 1500 - 1508.

FEDERAL FACILITY RESPONSIBILITIES UNDER NEPA INCLUDE:

- Evaluating all Federal actions to determine applicability of NEPA, including submitting Categorical Exclusion or Findings of No Significant Impact documentation to denote where actions are not significant, as appropriate
- Performing Environmental Assessments and preparing Environmental Impact Statements (EISs)
- Developing and submitting a Record of Decision to address the EIS findings and provide project alternatives and mitigation measures
- Submitting plans to State or local agencies
- Ensuring public participation in the NEPA process

a. NEPA Summary

Under NEPA Title I, §102, Federal agencies are required to incorporate environmental considerations into planning and decisionmaking through a systematic interdisciplinary approach. Section 102 requires Federal agencies to prepare detailed statements assessing the environmental impact of, and alternatives to, major Federal actions that may significantly affect the environment. These detailed statements are referred to as EISs. Under Title II, the Council on Environmental Quality (CEQ) was established to oversee the administration of NEPA and ensure that Federal agencies comply with NEPA requirements. In 1978, CEQ developed regulations implementing

NEPA that are binding on all Federal agencies. These regulations cover the procedural requirements of NEPA and the preparation of an EIS. The CEQ regulations are listed in Section d below.

Although the CEQ is responsible for developing the regulations for preparing an EIS, EPA is responsible for reviewing all EISs for environmental quality and for filing all EISs in the *Federal Register.* EPA's authority to review EISs was promulgated through Clean Air Act (CAA) §309. CAA §309 is discussed in more detail below and also is discussed in Section B.1 of this chapter.

b. Application of NEPA to Federal Agencies

NEPA's requirements are mandatory for Federal agencies and have been a significant force in reforming agency decisionmaking processes. NEPA contains "procedural" requirements that are supplemental to existing statutory responsibilities of Federal agencies. Although NEPA's provisions apply only to Federal agencies, State, local, and private actions may be affected by NEPA's requirements. For example, State, local, and private actions that involve Federal funding or permits may trigger NEPA requirements.

The only agency that the courts have recognized as having a limited exemption from NEPA is EPA. Although no reference to an exemption for EPA exists in the statute, EPA generally has been exempted from NEPA's requirements based on EPA's statutory responsibility for protection of the environment. Furthermore, legislation enacted subsequent to NEPA has removed EPA from NEPA's requirements. For example, the Energy Supply and Environmental Coordination Act of 1974 exempted EPA's compliance with NEPA for its actions under both CAA and the Clean Water Act.

Council on Environmental Quality

Under Title II, CEQ has several responsibilities in overseeing the administration of NEPA. CEQ's responsibilities include:

< Developing regulations and other guidance to assist Federal agencies with NEPA compliance;

< Resolving lead agency disputes during the EIS process;

< Providing Federal agencies with training and advice to encourage NEPA compliance; and

< Mediating disputes between Federal agencies regarding environmental policy.

In addition to its NEPA duties, CEQ advises the President on environmental issues and reports on the state of the environment to the President at least once a year.

CEQ has had its authority expanded twice by Executive Orders (E.O.): 1) E.O. 11514, *Protection and Enhancement of Environmental Quality*, which directs CEQ to issue guidelines to Federal agencies in the preparation of EISs; and 2) E.O. 11991, *Relating to Protection and Enhancement of*

Environmental Quality, which directs CEQ to issue binding regulations in place of the guidelines. While CEQ has no authority to enforce its regulations, CEQ plays a major role in advising agencies on compliance matters.

The NEPA Process

The NEPA process begins with the determination of whether a "proposed action" is subject to NEPA compliance. A proposed action is subject to NEPA if it is a proposal and a Federal action. A State, local, or private action also may be subject to NEPA if there is significant Federal involvement. This includes non-Federal actions that are regulated, licensed, permitted, or approved by Federal actions (e.g., the need for Federal permits, licenses, and other approval from a Federal agency program).

A proposed action can be categorically excluded from the environmental assessment (EA) or EIS requirements if the action does not individually or cumulatively have a significant effect on the human environment. In addition, the proposed action may be excluded if the Federal agency demonstrates that there will be no significant environmental effect through procedures adopted by a Federal agency pursuant to NEPA (e.g., building of a fence or undertaking irrigation projects).

If the proposed action is not exempt from the EA or EIS requirements, then the lead Federal agency must prepare an EA. The EA is a concise public document that should include a brief discussion of the need for the proposal, of alternatives to the proposed action, the environmental impacts of the proposed action and its alternatives, and a listing of agencies and persons consulted. The EA helps to determine if an agency needs to prepare an EIS or if the agency can make a finding of no significant impact (FONSI).

In the EA, the lead Federal agency must assess the proposed action for the following three impacts:

< *Direct Effects* that are caused by the action and occur at the same time and place. Examples of direct effects are the elimination of original land use due to the erection of a building and change in land use.

< *Indirect Effects* that are caused by the action and occur later in time. For example, an indirect effect may cause an increase in population density or growth rate which, in turn, can cause growth-induced stress effects on the air, water, and other natural systems.

< *Cumulative Effects* that are caused by the action and slowly impact the environment when combined with other past, present, and reasonably foreseeable future actions. A cumulative effect is an individual action that is minor when considered solely but becomes a significant effect on the environment when occurring in conjunction with other minor actions.

After reviewing the EA, the lead Federal agency follows two courses of action. If the lead Federal agency makes a FONSI, then the agency must explain in writing why the proposed action does not have a significant impact on the human environment. If the EA highlights several human or

environmental impacts that are significant in nature, then the lead Federal agency must continue its review of the proposed action and develop an EIS.

The EIS process begins with the publication of a Notice of Intent in the *Federal Register.* The Notice of Intent must provide the following information: the proposed Federal action and all of its alternatives, the lead Federal agency's planned scoping of issues process, and a person to contact in the Federal agency for answers to questions pertaining to the EIS.

After the Notice of Intent is published, the lead Federal agency will begin the scoping process to determine the scope of the issues to be addressed in the EIS. Public participation is encouraged during the scoping process through public hearings. Once the scoping process is concluded, the lead Federal agency prepares a draft EIS based on the identified scope of issues.

Upon completion of the draft EIS, the lead Federal agency must provide a 45-day comment period for review of the draft EIS. During this time, members of the public; Federal, State, and local agencies; American Indian Tribes; and other interested parties can review and provide comments on the draft EIS. In addition, the lead Federal agency must submit the draft EIS to EPA for review. All EISs are filed with the Office of Federal Activities (OFA) and are announced weekly in the *Federal Register*.

In 1970, Congress added CAA §309 to CAA to clarify that EPA has oversight authority for all proposed Federal actions involving NEPA. For example, EPA has the authority to review proposed legislation, proposed regulation, EAs, and draft and final EISs. EPA also has authority to review any proposal for which the lead Federal agency will not prepare an EIS, but which EPA believes requires an EIS.

Within EPA, OFA and EPA's ten Regions are responsible for reviewing national and regional EISs. The adjacent box lists EPA's Regional NEPA Review Coordinators.

EPA REGIONAL NEPA REVIEW COORDINATORS

Region 1
(CT, ME, MA, NH, RI, VT)
Betsy Higgins-Congram ,
(617) 565-3422

Region 2
(NJ, NY, PR, VI)
Robert Hargrove,
(212) 637-3504

Region 3
(DE, DC, MD, PA, VA, WV)
Roy Denmark,
(215) 566-2721

Region 4
(AL, FL, GA, KY, MS, NC, SC, TN)
Heinz Mueller,
(404) 562-9611

Region 5
(IL, IN, MI, MN, OH, WI)
Michael MacMullen,
(312) 886-7341

Region 6
(AR, LA, NM, OK, TX)
Michael Jansky,
(214) 665-7451

Region 7
(IA, KS, MO, NE)
Lynn Kring,
(913) 551-7456

Region 8
(CO, MT, ND, SD, UT, WY)
Carol Campbell,
(303) 312-6705

Region 9
(AZ, CA, HI, NV, AS, GU)
David Farrell,
(415) 744-1584

Region 10
(AK, ID, OR, WA)
Rick Parkin,
(206) 553-8574

To help with the review and assessment of all draft and final EISs, EPA developed the *Policy and Procedures for the Review of Federal Actions Impacting the Environment* (October 3, 1984). In reviewing the environmental impacts of the proposed Federal action, OFA and EPA Regions rate

the draft EIS based on four criteria: lack of objection, environmental concerns, environmental objections, and environmentally unsatisfactory. The box below further defines these ratings.

In addition, OFA and the Regions also evaluate the draft EIS on its adequacy. The adequacy criteria are as follows:

< *Category 1* states that the EIS is adequate and no additional information is required.

< *Category 2* states that the EIS contains insufficient information. EPA needs additional information to review, or other alternatives should be evaluated.

< *Category 3* states that the EIS is inadequate and seriously lacking in information or analysis to address significant environmental impacts. The Category 3 rating determines that the EIS does not meet NEPA requirements and must be revised. If a lead Federal agency receives an unsatisfactory rating and the significant issues cannot be resolved, EPA will refer the EIS to CEQ.

RATING ENVIRONMENTAL IMPACTS

LO: Lack of Objection

, EPA did not identify any potential impacts to the environment from the proposal.

EC: Environmental Concerns

, EPA identified environmental impacts that need to be avoided. Mitigation measures may be required.

EO: Environmental Objections

, EPA identified significant environmental impacts from the EIS. Corrective measures may include substantial changes to the proposed action or consideration of another alternative.

EU: Environmentally Unsatisfactory

, EPA identified severe environmental impacts in the EIS and the proposed action can not proceed.

After the review process, CAA §309 requires that EPA's written comments be made available to the public. The lead Federal agency is responsible for responding to all comments, including EPA's comments, and for incorporating comments into the draft EIS. The final EIS must include the lead Federal agency's response to comments.

When the EIS is final, the lead Federal agency must file it with OFA. OFA publishes the receipt of all final EISs in the *Federal Register* each week. The final EIS has a 30-day public comment period starting after the EIS is published in the *Federal Register.*

At the end of the public comment period, the lead Federal agency makes a decision on the proposed Federal action. To justify and explain its course of action, the lead Federal agency must publish a Record of Decision (ROD). The ROD is a written statement that is made available to the public.

NEPA's Relationship with Other Federal Laws

NEPA's mission of ensuring environmental protection often overlaps with other environmental laws. These include E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and the Base Closure and Realignment Act (BRAC). NEPA's relationship to E.O. 12898, CERCLA, and BRAC is summarized below.

Executive Order 12898

On February 11, 1994, President Clinton signed E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. The purpose of E.O. 12898 was to focus Federal agencies' attention on the environmental and human health conditions in low-income and minority communities. Many times, low-income and minority communities have experienced a greater share of the negative environmental costs associated with development and Federal projects. Environmental justice concerns are integral to the NEPA process because the impacts on human health and the environment in a community are studied in the draft and final EISs.

To ensure that environmental justice considerations are incorporated into EPA's preparation of NEPA EISs and EAs, OFA developed the *Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* (April 1998). This guidance:

< heightens the awareness of EPA staff in addressing environmental justice issues within NEPA analyses and considering the full potential for disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

< presents basic procedures for identifying and describing junctures in the NEPA process where environmental justice issues may be encountered;

< presents procedures for addressing disproportionately high and adverse effects to evaluate alternative actions; and

< presents methods for communicating with the affected population throughout the NEPA process.

In preparing for any proposed action, a screening for environmental justice concerns should be incorporated into the initial NEPA screening analysis. During the screening process, OFA recommends that the initial analysis focus on the following questions: 1) Does the potentially affected community include minority and/or low-income populations? and 2) Are the environmental impacts likely to fall disproportionately on minority and/or low-income members of the community and/or Tribal resources? By evaluating the responses to these questions, Federal agencies can determine if environmental justice concerns need to be addressed in the draft EIS or EA.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In a January 23, 1995, Department of Justice (DOJ) decision, it was decided that a Federal agency is not required to independently implement NEPA at CERCLA cleanup sites. The DOJ decision stated that the CERCLA process incorporates many of the NEPA values of public participation and collection of environmental and human health impacts that result from a proposed Federal action. The DOJ decision indicated that Federal agencies may supplement the public participation and data collection processes under CERCLA to include some NEPA practices. In reference to the DOJ decision, EPA stated that it would cooperate with Federal agencies that are voluntarily implementing NEPA at CERCLA sites; however, EPA noted that voluntary NEPA compliance must not impede cleanup operations.

Defense Base Closure and Realignment Act (BRAC)

The decision to close or realign military installations is not subject to NEPA review. However, NEPA requirements apply to 1) the process of closing or realigning an installation once the installation has been selected and 2) the process of relocating military functions. NEPA review is required during the process of real estate disposal and during the implementation of realigning military functions from one installation to another. Under NEPA, the Department of Defense (DoD) must define the environmental impact of the proposed reuse, document any unavoidable adverse effects, and identify alternatives to the proposed action.

The 1990 BRAC limited NEPA review to the "disposal" of property rather than the "closing" of installations as required in the 1988 BRAC. DoD is required under NEPA to study and develop reasonable alternatives to the community reuse plan. Where the CERCLA/Resource Conservation and Recovery Act (RCRA) and NEPA processes overlap, they must be coordinated so that the draft EIS is consistent with the timing of the Community Environmental Response Facilitation Act (CERFA) requirements. Environmental analysis for reuse of base closures is the responsibility of DoD and not of future owners. Each service has developed specific issues regarding base closures and disposal. In addition to addressing a broad range of environmental statutes, the BRAC/NEPA document must discuss encumbrances and easements beyond CERCLA requirements, such as requirements of E.O. 11990 that pertain to wetlands. For more information on BRAC, see Section C of this chapter. For more information on E.O. 11990, see Section D.8 of this chapter.

c. NEPA Enforcement

Unlike other environmental laws, NEPA is procedural and does not contain specific enforcement provisions. Hence, neither EPA nor CEQ has enforcement authority for NEPA. The primary method of enforcing NEPA's provisions has rested with public awareness and citizen suits brought by private citizens, environmental or citizen action groups, State or local agencies, and American Indian Tribes.

When reviewing NEPA cases, the Federal courts ensure that the lead Federal agency has performed an "adequate" EIS and considered all the issues. A Federal court may decide that the lead Federal agency has not satisfied all NEPA requirements and thus may delay the proposed Federal action until all NEPA requirements have been met. It is important to note that the Federal courts' judgment can

not replace the lead Federal agency's decision; however, if the Federal court believes that the agency has made "a clear error of judgment," then the Federal agency must reconsider the EIS.

d. EPA and CEQ NEPA Regulations

Both EPA and CEQ have developed regulations implementing NEPA. CEQ's final regulations implementing NEPA are found in 40 CFR Parts 1500 through 1508 and are listed below. EPA's regulations implementing NEPA are found in 40 CFR Part 6.

CEQ NEPA REGULATIONS

40 CFR 1500	Purpose, Policy, and Mandate
40 CFR 1501	NEPA and Agency Planning
40 CFR 1502	Environmental Impact Statement
40 CFR 1503	Commenting
40 CFR 1504	Predecision Referrals to the Council of Proposed Federal Actions Determined to Be Environmentally Unsatisfactory
40 CFR 1505	NEPA and Agency Decisionmaking
40 CFR 1506	Other Requirements of NEPA
40 CFR 1507	Agency Compliance
40 CFR 1508	Terminology

e. EPA NEPA Policies and Guidance

Available NEPA guidance and policy documents are too numerous to list. Instead, selected EPA, CEQ, Department of Energy, and Department of State NEPA policies and guidance are provided below.

NEPA POLICIES AND GUIDANCE

EPA Documents

Cross Cutting Environmental Laws: A Guide for Federal/State Project Officers (January 1991)

Determining Conformity of General Federal Actions to State or Federal Implementation Plans (amending 40 CFR Parts 6, 51, and 93) (58 FR 63215, November 30, 1993, with Department of Energy Office of Environmental Guidance Memorandum, January 27, 1994)

Draft Guidance for Federal Agencies on Key Terms in Executive Order 12898, Interagency Working Group on Environmental Justice (August 8, 1995)

Environmental Justice for EPA Actions: Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (September 1997)

Environmental Justice in 309 Reviews (July 19, 1995)

EPA Review Manual Policy and Procedures for the Review of Federal Actions Impacting the Environment (October 3, 1984)

NEPA POLICIES AND GUIDANCE (continued)

EPA Documents

Filing System Guidance for Implementing 1506.9 and 1506.10 of the CEQ Regulations (March 7, 1989, Part II)

Filing System Guidance for Implementing 1506.9 and 1506.10 of the CEQ Regulations, Office of Federal Activities, 54 FR 9592, March 7, 1989, with Office of Federal Activities Memorandum, (February 15, 1994)

40 CFR Part 6, EPA Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act

Guidance for Incorporating Environmental Justice Concerns in EPA's Compliance Analyses, Office of Federal Activities (April 1998)

Guidance on Incorporating EPA's Pollution Prevention Strategy into the Environmental Review Process, Office of Federal Activities (February 24, 1993)

Habitat Evaluation: Guidance for the Review of Environmental Impact Assessment Documents, Office of Federal Activities (March 8, 1993)

The Model Plan for Public Participation (1996)

Policy and Procedures for the Review of Federal Actions Impacting the Environment, Office of External Affairs and Office of Federal Activities (October 3, 1984)

Pollution Prevention/Environmental Impact Reduction Checklists for NEPA/309 Reviewers (January 1995)

Preamble and Interim Final Rule Regarding Environmental Impact Assessment of Nongovernmental Activities in Antarctica

CEQ Documents

Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act (August 11, 1980)

Considering Cumulative Effects Under the National Environmental Policy Act (January 1997)

Environmental Effects Abroad of Major Federal Actions, Executive Order 12114; Implementing and Explanatory Documents (44 FR 18722, March 29, 1979)

Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (46 FR 18026, March 23, 1981; as amended, 51 FR 15618, April 25, 1986)

NEPA POLICIES AND GUIDANCE (continued)

CEQ Documents

Guidance for Addressing Environmental Justice Under the National Environmental Policy Act (NEPA) (March 1998)

Guidance on Applying Section 404(r) of the Clean Water Act to Federal Projects Which Involve the Discharge of Dredged or Fill Materials into Waters of the U.S., Including Wetlands (November 17, 1980)

Guidance Regarding NEPA Regulations (includes Scoping, Categorical Exclusions, Adoption Procedures, Contracting Provisions, Selection of Alternatives in Licensing and Permitting Situations, and Tiering Regulations) (48 FR 34263, July 28, 1983)

Incorporating Biodiversity Considerations into Environmental Impact Analysis under the National Environmental Policy Act (January 1993)

Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory (August 10, 1980)

Memorandum to Heads of Federal Agencies: Pollution Prevention and the National Environmental Policy Act (January 12, 1993)

National Environmental Policy Act Implementation Procedures; Appendices I, II, and III (49 FR 49750, December 21, 1984)

National Environmental Policy Act Regulations: Incomplete or Unavailable Information (40 CFR 1502.22 amendment and 51 FR 15618, April 25, 1986)

NEPA at 19: A Primer on an "Old" Law with Solutions to New Problems (Dinah Bear, 19 Envtl. L. Rep. 10060, February 1989)

Prime and Unique Agricultural Lands and the National Environmental Policy Act (August 11, 1980)

Publishing of Three Memoranda for Heads of Agencies (45 FR 59189, September 8, 1980)

Scoping Guidance (46 FR 25461, May 7, 1981, Notice of Availability of Memorandum to Agencies Containing Scoping Guidance, and April 30, 1981, Memorandum)

DOE Documents

Appendix A Categorical Exclusions, Office of NEPA Oversight (August 7, 1992)

Compliance with Floodplain/Wetlands Environmental Review Requirements (Implements Executive Orders 11988 and 11990 of May 24, 1977) (44 FR 12593, March 7, 1979) (10 CFR Part 1022)

DOE Environmental Assessment Checklist, Assistant Secretary for Environment, Safety and Health (August 16, 1994)

NEPA POLICIES AND GUIDANCE (continued)

DOE Documents

DOE 5440.1E, National Environmental Policy Act Compliance Program (November 10, 1992, under revision)

Frequently Asked Questions on DOE NEPA Regulations (May 1992, amended September 1994)

Guidance on Implementation of the DOE NEPA/CERCLA Integration Policy, Assistant Secretary for Environment, Safety and Health (November 15, 1991)

Guidance Related to Analysis of Impacts to Workers in National Environmental Policy Act Documentation, Assistant Secretary for Environment, Safety and Health (June 10, 1988)

Implementation of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; Final Guideline (46 FR 1007, January 5, 1981)

Integrating Pollution Prevention with NEPA Planning Activities, Office of NEPA Oversight (October 15, 1992)

National Environmental Policy Act Implementing Procedures (57 FR 15122, April 24, 1992 and 10 CFR Part 1021)

Procedures for Compliance with Floodplain/Wetlands Environmental Review Requirements, 10 CFR Part 1022 and Office of NEPA Oversight (October 16, 1992, modified September 1994)

Questions and Answers on the Secretarial Policy Statement on the National Environmental Policy Act (July 25, 1994)

Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements, Assistant Secretary for Environment, Safety and Health (May 27, 1993, and CEQ Letter, April 6, 1993)

Recommendations on Alternative Actions for Analysis in Site-wide NEPA Reviews, Assistant Secretary for Environment, Safety and Health (May 26, 1992)

Report of the Environmental Assessment Process Improvement Team (January 1994)

Secretarial Policy on the National Environmental Policy Act (June 13, 1994)

Site Development Planning (DOE 4320.1B, March 26, 1992)

Memorandum: Agreed to Report of March 31, 1994 Meeting Regarding the Application of NEPA to CERCLA Cleanups (January 23, 1995)

State Department Documents

Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114 (44 FR 65560, November 13, 1979)

FOR MORE INFORMATION

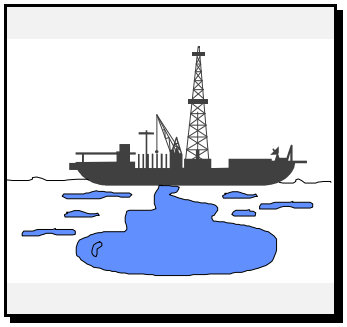
EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on NEPA requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

Office of Federal Activities Home Page: http://es.epa.gov/oeca/ofa/

Council on Environmental Quality Home Page: http://www.whitehouse.gov/CEQ/

Council on Environmental Quality: **NEPAnet**: http://ceq.eh.doe.gov/nepa/nepanet.htm

7. Oil Pollution Act of 1990



Overview: The Oil Pollution Act (OPA) of 1990, the principal Federal statute regulating oil pollution spills, strengthened EPA's ability to prevent and respond to catastrophic oil spills. OPA established the national Oil Spill Liability Trust Fund (hereinafter referred to as the "Fund"), financed through a tax on oil, to clean up spills when the responsible party is incapable or unwilling to do so. OPA requires certain oil storage facilities and vessels to prepare and submit to the Federal government plans detailing how they will respond to large discharges of oil. EPA has published regulations for on-shore non-transportation related storage facilities, and the U.S. Coast Guard (USCG) has done so for oil tankers. OPA also requires the development of Area Contingency Plans to prepare and plan for oil spill response on a regional scale. Title I of OPA establishes liability and compensation requirements for oil pollution caused by tank vessels and facilities. Title I also imposes strict liability (liability without a showing of fault) for a comprehensive and expansive list of damages from an oil spill into the water from vessels or facilities. Title IV of OPA amends the Clean Water Act (CWA) by expanding the Federal government's authority and capability to direct and manage oil spill cleanup operations, amending Title 46 of the *United States Code (U.S.C.)* on shipping and navigation safety, and substantially increasing the civil and criminal penalties for causing spills and for violating many marine safety and environmental protection laws. The CWA discussion located in Section B.2 of this chapter discusses the OPA amendments to CWA §311 and EPA's Spill Prevention Control and Countermeasure regulations. Of the remaining OPA titles, Title III concerns international oil pollution prevention and removal; Titles II, VI, and IX contain technical and conforming amendments to other laws; and Titles VII and VIII address oil pollution research and development programs and reform of the trans-Alaska pipeline system. The statute can be found at 33 U.S.C. §2701 et seq. Federal regulations addressing oil pollution are found in 40 CFR Parts 110, 112, and 300 subparts C, D, and E; 49 CFR Part 194; and 33 CFR Part 154.

FEDERAL FACILITY RESPONSIBILITIES UNDER OPA INCLUDE:

- Developing and updating the facility's oil spill emergency response plans
- Maintaining required records/documentation
- Testing emergency response equipment
- Periodically performing mock spill response drills
- Notifying Federal, State, and local agencies in case of an incident
- Mitigating all spills and discharges
- Ensuring employees have required training

a. OPA Summary

OPA comprehensively addresses the prevention, preparedness, and response authorities of the Federal government. The principal goals of OPA are to:

< Expand Federal authority to respond to discharges of oil and hazardous substances;

< Ensure that responsible parties pay the full cost of spills;

< Improve facility preparedness and prevention through contingency planning; and

< Facilitate research and development of oil spill technology.

To achieve these goals, OPA contains liability provisions that are similar to those under the Comprehensive Environmental Response, Compensation, and Liability Act. OPA also strengthens planning and prevention by requiring spill contingency plans and provides funding for oil pollution research. OPA contains three major sections:

< *Oil Pollution Liability and Compensation*: Provides a mechanism for funding removal costs and seeking payment of damages associated with discharges of oil and increases liability for responsible parties.

< *Prevention and Planning*: Requires the development of National and Area Contingency Plans (NCPs and ACPs), a National Response Unit, Coast Guard District Response Groups, and specific tank vessel and facility response plans. In addition, these provisions outline the procedures for licensing operators of vessels and equipment requirements and inspections.

< *Oil Spill Pollution Research and Development*: Creates a committee to coordinate all efforts to improve oil spill technology.

Oil Pollution Liability and Compensation

The oil spill liability provision increases the potential liability of owners and operators of tank vessels from $150 per gross ton to $1,200 per gross ton of vessel weight. In addition, responsible parties at onshore facilities may be held liable up to $350 million per incident. The compensation provision expands the scope of damages recoverable to include losses of property, revenues, and profits. The $1 billion Fund, administered by USCG, can provide up to $500 million per incident for cleanup costs and payment of damages associated with discharges of oil and hazardous substances (see the EPA fact sheet *OPA Q's & A's: Overview of the Oil Pollution Act of 1990*, December 1991, Publication 9360.8-01FS).

Prevention and Planning

Prevention and planning provisions require 1) USCG to establish a National Response Unit and a Coast Guard District Response Group; 2) Area Committees and ACPs; 3) tank vessel and facility

response plans; 4) periodic inspections of containment booms, skimmers, vessels, and other major equipment used to remove discharges; and 5) vessels operating on navigable waters and carrying oil or hazardous substances in bulk as cargo to carry appropriate removal equipment and to conduct periodic drills in areas for which ACPs are required**.**

Oil Spill Pollution Research and Development

Pursuant to the research and development provisions, an Interagency Coordinating Committee on Oil Pollution Research was established to coordinate a comprehensive program for oil pollution research and technology development.

OPA Implementation

Under Executive Order (E.O.) 12777, issued October 18, 1991, the President delegated authority to implement OPA to various Federal agencies and departments, including EPA and the USCG (via the Department of Transportation (DOT)). These responsibilities, as outlined in an EPA/USCG Memorandum of Understanding, include:

< USCG is responsible for response plans from marine transportation-related facilities;

< EPA is responsible for oil spill prevention, preparedness, and response activities associated with non-transportation-related onshore facilities; and

< DOT is generally responsible for oil spill planning response activities for tank vessels, transportation-related onshore facilities, and deep water ports.

Key OPA requirements are discussed below.

b. Application of OPA to Federal Facilities

OPA requires EPA to amend the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to enhance and expand oil spill response procedures. In addition, OPA requires certain facilities to develop response plans for responding to worst case discharges of oil and hazardous substances. Federal facility activities subject to OPA requirements include 1) storing or handling petroleum, fuel oil, sludge oil, and oil mixed with waste; 2) transferring oil by using motor vehicles or rolling stocks; and 3) supporting maritime vessel activities or other water-related activities where fuels are used. A summary of key OPA requirements is provided below. OPA amendments to the CWA §311 are discussed in Section B.2 of this chapter. For additional information on NCP requirements, see E.O. 12580, *Superfund Implementation*, in Appendix C and in Section D.3 of this chapter.

§1001(32): Definitions (Responsible Party) - Section 1001(32)(A) of OPA defines a responsible party as "any person owning, operating, or demise chartering the vessel." Section 1001(32)(B) and (C) also defines a responsible person as "any person owning or operating the onshore facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any

interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit."

§1002(a): Elements of Liability - Provides that the party responsible for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge, is liable for certain specified damages resulting from the discharged oil and for removal costs incurred in a manner consistent with the NCP.

§1002(b): Covered Removal Costs and Damages - Defines removal costs and damages.

§1002(c): Excluded Discharges - Exceptions to OPA liability provisions include discharges of oil authorized by a permit, discharges from a public vessel, or discharges from onshore facilities covered by the liability provisions of the Trans-Alaska Pipeline Authorization Act.

§1002(d): Liability of Third Parties - Provides that if a responsible party can establish that the removal costs and damages resulting from an incident were caused solely by an act or omission by a third party, the third party will be held liable for such costs and damages.

§1003: Defenses to Liability - Identifies defenses to liability, including acts of God and war.

§1004: Limits on Liability - Establishes limits on liability for tank vessels, other vessels, and offshore and onshore facilities.

§1012: Uses of the Fund - Specifies how the Fund may be used (e.g., for payment of removal costs) and specifies that States may receive payments not to exceed $250,000 per incident for removal costs.

§1016: Financial Responsibility - Generally, offshore facilities are required to maintain evidence of financial responsibility of $35 million for an offshore facility located seaward of the seaward boundary of a State; or $10 million for an offshore facility located landward of the seaward boundary of a State. Vessels and deepwater ports must provide evidence of financial responsibility up to the maximum applicable liability amount. Claims for removal costs and damages may be asserted directly against the guarantor providing there is evidence of financial responsibility.

§1018(a): Preservation of State Authorities - OPA does not preempt State law. States may impose additional liability and requirements with respect to the discharge of oil or other pollution by oil or any removal actions.

§1019: State Financial Responsibility - States have the authority to enforce, on the navigable waters of the State, OPA requirements for evidence of financial responsibility.

c. EPA Enforcement

EPA's enforcement authorities for OPA violations reside in CWA §311(e) and §311(c). Typically, EPA will negotiate a compliance agreement with a Federal agency in violation of OPA. The typical

compliance agreement contains several provisions including schedules for achieving compliance and dispute resolution.

Criminal Enforcement

Criminal sanctions may be brought against individual employees of Federal facilities for violations of OPA. Criminal fines may be imposed for violations of OPA under CWA §309. For more information on CWA, see Section B.2 of this chapter.

d. State Enforcement

Section 1019 of OPA authorizes States to enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under OPA §1016.

e. Tribal Enforcement

OPA contains no Tribal enforcement provisions.

f. Citizen Enforcement

OPA contains no citizen enforcement provisions.

g. OPA Regulations

OPA regulations are set forth in 40 CFR Parts 110, 112, and 300 subparts C, D, E; 49 CFR Part 194; and 33 CFR Part 154. Various OPA regulations are listed below.

OPA REGULATIONS

33 CFR 154	Marine Transportation Related Facility Response Plans
40 CFR 110	Discharge of Oil
40 CFR 112.20	Non-Transportation-Related Onshore Facility Response Plans
40 CFR 300 Subpart C	Planning Preparedness
40 CFR 300 Subpart D	Operational Response Phases for Oil Removal
40 CFR 300 Subpart E	Hazardous Substance Response
49 CFR 194	Onshore Transportation Related Facility Response Plans

h. EPA OPA Policies and Guidance

Key OPA policy and guidance documents are listed in the box below.

EPA OPA POLICIES AND GUIDANCE

Facility Response Plans, OSWER Directive 9360.8-06FS (February 1993)

Oil and Hazardous Substance Response Manual, EPA 907-B-80-100

OPA Q's & A's: Overview of the Oil Pollution Act of 1990, OSWER Directive 9360.8-01FS (December 1991)

OPA Update, OSWER Directive 9200.5-115 (July 1994)

Use of Chemical Dispersants for Marine Oil Spills, EPA 600-R-93-195

FOR MORE INFORMATION

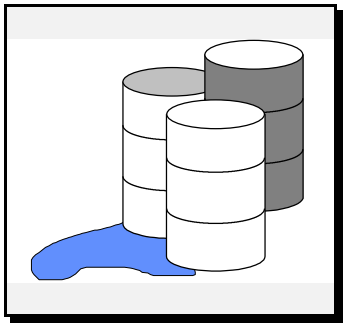
EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FCC) for more information on OPA requirements. Appendix A provides the names and phone numbers of each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

RCRA, Superfund, and EPCRA Hotline: This Hotline is a publicly accessible service that provides up-to-date information on several EPA programs and provides copies of regulations that have appeared in the *Federal Register*. The Hotline responds to factual questions on Federal EPA regulations developed under the Oil Pollution Act, Resource Conservation and Recovery Act, including the Underground Storage Tank program, Superfund, and the Emergency Planning and Community Right-to-Know Act. The Hotline also provides information on Section 112(r) of the Clean Air Act and on Spill Prevention, Control, and Countermeasures regulations. To speak with Information Specialists about regulatory questions or to order documents, call the Hotline toll-free at 1-800-424-9346. In the Washington, D.C., area, call (703) 412-9810.

Office of Solid Waste and Emergency Response Home Page: http://www.epa.gov/epaoswer

Oil Spill Program Home Page: http://www.epa.gov/oilspill/index.htm

8. Resource Conservation and Recovery Act



Overview: The Resource Conservation and Recovery Act (RCRA) provides "cradle-to-grave" control of solid and hazardous waste by establishing management requirements on generators and transporters of hazardous waste and on owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs). RCRA has been amended by the Hazardous and Solid Waste Amendments (HSWA) and the Federal Facility Compliance Act (FFCA). RCRA mainly applies to active facilities, although through §7003, it can address the serious problem of abandoned and inactive facilities. These abandoned facilities also may be covered under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). For more information on CERCLA, see Section B.3 of this chapter. RCRA can be found at 42 U.S.C. §6901 et seq. and in 40 CFR Parts 240-282.

Subtitle C of RCRA was enacted in 1976, replacing the Solid Waste Disposal Act and the Resource Recovery Act. Subtitle C (RCRA §§3001-3023) establishes the national hazardous waste management program. This includes the identification and listing of hazardous wastes; standards applicable to generators and transporters and to owners and operators of TSDFs; and provisions for permitting, inspections, and enforcement. Most States have been authorized to implement some or all of the RCRA Subtitle C program.

In 1984, Congress enacted HSWA, which among other things, added Subtitle I to RCRA. Subtitle I was enacted to address leaking underground storage tanks (USTs) and requires EPA to establish standards for tanks installed both prior to and after passage of the new requirements. These standards cover UST design, operation, cleanup, administration, and closure. The authority to administer the UST program has been delegated to approximately 25 States; many of which have issued their own UST standards, often exceeding the Federal minimum and containing more stringent requirements and penalties. The RCRA UST provisions can be found at 42 U.S.C. §6991 et seq. and in 40 CFR Parts 240-242.

In 1992, FFCA was passed to clarify that Federal agencies must comply with solid and hazardous waste management requirements and that Federal agencies are subject to enforcement provisions of RCRA. Although Federal facilities were subject to RCRA provisions prior to the 1992 amendment, FFCA primarily clarified that Federal facilities are subject to penalties and that Federal facilities are subject to EPA administrative enforcement orders. Congress intended FFCA to confirm the Federal government's obligation to comply with all solid and hazardous waste provisions at all sites and to ensure Federal facility compliance with all Federal, State, interstate, and local solid and hazardous waste requirements. In achieving this goal, FFCA has three major impacts: 1) the expanded waiver of sovereign immunity of the Federal government with respect to all Federal, State, interstate, and local enforcement; 2) new management and reporting requirements with respect to mixed waste; and 3) identification of circumstances under which conventional and chemical military munitions are and are not considered to be a waste for regulatory purposes under RCRA. These compliance responsibilities are discussed in detail below. FFCA grants explicit authority to EPA to use the

enforcement authorities provided in RCRA against any department, agency, or instrumentality of the Executive, Legislative, or Judicial branch of the Federal government that is in violation of RCRA. The principal effects of FFCA are to:

< Subject Federal agencies to RCRA civil penalties;

< Confirm that Federal employees are personally liable for RCRA criminal violations;

< Require Department of Energy (DOE) facilities that generate or store mixed waste to submit to EPA a mixed waste inventory, a national treatment capacity and technology inventory, and plans for developing treatment capacities and technologies for mixed waste. These plans are incorporated into enforceable orders by either EPA or the States; and

< Require EPA, after consulting with Department of Defense (DoD) and appropriate State officials, to issue a rule identifying when conventional and chemical military munitions become hazardous waste subject to Subtitle C of RCRA and to provide for the safe storage and transportation of such wastes. The military munitions rule was issued in February 1997 and is discussed further in Section a, RCRA Summary, on the following page.

FEDERAL FACILITY RESPONSIBILITIES UNDER RCRA INCLUDE:

, Identifying, characterizing, and labeling hazardous waste

, Obtaining an EPA identification (ID) number (ID numbers are required for all handlers, including generators, transporters, TSDFs, burner/blenders)

, Managing and taking inventory of hazardous waste to determine generator status

, Complying with all permit conditions

, Manifesting hazardous waste for off-site disposal and filing exception reports

, Completing Land Disposal Restriction (LDR) notification/certification

, Ensuring that off-site treatment, recycling, and disposal procedures meet LDRs

, Shipping waste to approved TSDFs within time limits mandated by the generator requirements

, Maintaining required records/documentation

, Developing a program to minimize waste generation

, Reimbursing EPA and its agents for inspection costs

, Cooperating during RCRA inspections

FEDERAL FACILITY RESPONSIBILITIES UNDER RCRA INCLUDE:
(continued)

- Submitting to EPA a mixed waste inventory capacity report
- Submitting treatment capacity and technology plans
- Submitting yearly progress reports on compliance with mixed wastes requirements
- Notifying EPA of intended exports of hazardous waste and filing an annual report summarizing exports of hazardous waste during the previous calendar year
- Registering underground storage tanks (USTs) with the appropriate State authority
- Ensuring proper installation of tanks to meet new tank standards
- Upgrading or replacing older tanks by December 22, 1988, to meet new standards (including spill/overfill and corrosion protection)
- Performing release detection on most types of tanks, either manually or with the aid of automatic equipment
- Responding to spills and leaks, including proper notification
- Performing corrective actions (cleanups) where releases have occurred
- Properly closing tanks to avoid future site issues
- Maintaining required UST records/documentation
- Complying with all applicable Federal, State, and local laws and regulations concerning the construction of new USTs

a. RCRA Summary

RCRA is the primary Federal statute regulating the generation, transportation, treatment, storage, and disposal of solid and hazardous waste. The term “hazardous waste” is defined in the statute as any waste material—solid, liquid or gaseous—that because of quantity, concentration, or physical, chemical, or infectious characteristic may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous wastes are classified as “characteristic,” “acutely hazardous,” or “listed.” A “characteristic” waste exhibits hazardous characteristics (i.e., corrosivity, reactivity, ignitability, or toxicity). Wastes are classified as “acutely hazardous” if they are fatal to humans at low doses, lethal in animal studies at particular doses, or otherwise capable of causing or significantly contributing to an increase in serious illness. Wastes may be “listed as hazardous” by

EPA if they contain hazardous constituents identified in 40 CFR Part 261 and if the agency concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

RCRA's principal objectives are to:

< Protect human health and the environment from potential adverse effects of improper solid and hazardous waste management;

< Conserve material and energy resources through waste recycling and recovery; and

< Reduce or eliminate the generation of hazardous waste as expeditiously as possible.

To achieve these objectives, RCRA authorizes EPA to regulate the generation, transportation, treatment, storage, and disposal of hazardous waste (also referred to as cradle-to-grave management) and the management of solid waste. RCRA established three distinct, yet interrelated, regulatory programs:

< *Solid Waste Management Program (RCRA Subtitle D)*: Sets national standards for the management of solid waste.

< *Hazardous Waste Management Program (RCRA Subtitle C)*: Sets national standards for hazardous waste management, provides for EPA authorization and oversight of State implementation of RCRA, and includes "corrective action" authorities to address releases to the environment.

< *Underground Storage Tank Program (RCRA Subtitle I)*: Protects groundwater from leaking underground storage tanks. Requires owners and operators of new tanks and tanks already in the ground to prevent, detect, and clean up releases and banned the installation of unprotected steel tanks and piping.

Generators

Generators of RCRA-regulated waste must comply with the recordkeeping, reporting, labeling, exporting, and container requirements set forth in 40 CFR Part 262. Generators also are responsible for tracking waste through a manifest system. The manifest system creates a written record of the chain-of-custody from the time a waste leaves a generator until it reaches its final disposal site.

Transporters

Transporters of RCRA-regulated waste are subject to labeling requirements, container standards, and recordkeeping requirements of the manifest system set forth in 40 CFR Part 263. Transporters of hazardous waste also are subject to Department of Transportation (DOT) regulations.

Treatment, Storage, and Disposal Facilities

TSDFs are subject to recordkeeping and reporting requirements, permitting, and technical standards covering the treatment, storage, disposal location, construction, and operation of TSDFs as set forth in 40 CFR Parts 264 and 265.

Land Disposal Restrictions

Both generators and TSDFs are subject to certain land disposal restrictions. Generators and TSDFs therefore may be required to treat wastes before land disposal as set forth in 40 CFR Part 268.

Military Munitions Rule

The Military Munitions Rule (issued in February 1997 with an effective date of August 12, 1997) establishes the regulatory definition of solid waste as it applies to military munitions in three specific categories: 1) unused munitions, 2) munitions being used for their intended purpose, and 3) used or fired munitions.

The rule states that unused munitions become waste when they are/have been 1) abandoned; 2) removed from storage for the purpose of being disposed of, burned, incinerated, or treated prior to disposal; 3) deteriorated or damaged beyond repair, recycling, or reuse; or 4) declared a waste by an authorized military official. Military munitions are not waste when used for their intended purpose, such as for training or as part of research, development, testing, and evaluation activities and during range clearance activities on active and inactive ranges. Additionally, the rule excludes unused munitions that are repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subject to materials recovery activities.

The Munitions Rule also specifies that used or fired munitions are solid waste when they are removed from their landing spot and then either managed off-range or disposed of on-range. In both cases, when the used or fired munition is a solid waste, it is potentially subject to regulation as a hazardous waste. Additionally, munitions that land off-range and are not promptly retrieved are treated as solid waste. Concerning the status of fired munitions left on closed and transferred ranges, EPA has postponed final action pending evaluation of the DoD Range Rule which is currently under development. The proposed DoD Range Rule was published in the *Federal Register* (62 FR 50975) on September 26, 1997.

The Munitions Rule extends beyond waste military munitions and the military. The rule sets forth new storage standards for the management of all military and non-military waste munitions and explosives. The rule clarifies that under most circumstances persons responding to time-critical munitions and explosives emergencies are not subject to RCRA generator, transporter, and permitting requirements. Additionally, the rule exempts all generators and transporters, not just those within the military, from the RCRA manifest for transportation of hazardous waste on public or private rights-of-way on or along the border of contiguous properties under the control of the same person, regardless of whether the contiguous properties are divided by rights-of-way. Regulations pertaining to military munitions can be found in 40 CFR Parts 260-266 and Part 270.

Mixed Waste

Mixed waste is defined as a waste mixture that contains both radioactive materials subject to the Atomic Energy Act (AEA) and a hazardous waste component regulated under RCRA. The U.S. Nuclear Regulatory Commission (NRC), NRC Agreement States, or the DOE regulate the radioactive wastes. NRC or NRC Agreement States regulate radioactive waste at commercial and non-DOE Federal facilities. DOE currently self-regulates under AEA.

In 1992, RCRA was amended by FFCA to require DOE to develop an inventory report of its mixed waste streams and to develop site treatment plans to treat mixed waste in accordance with the RCRA land disposal restrictions. DOE facilities that generate or store mixed waste and are not subject to a permit or an existing agreement, to which the State is a party, governing treatment of such wastes were required to prepare and submit, by October 1995, plans for developing treatment capacities and technologies to treat all of the mixed waste in compliance with the land disposal restriction requirements of §3004 of RCRA. These treatment capacity and technology plans may provide for any combination of centralized, regional, or on-site treatment and shall include information such as 1) which treatment technologies exist for mixed wastes; 2) a schedule for submitting applicable permit applications; 3) entering contracts and initiating construction; 4) a schedule for identifying and developing such technologies; and 5) for all facilities where DOE proposes to separate radionuclides from mixed wastes, information concerning waste volumes with and without radionuclide separation and the comparative cost of waste treatment and disposal.

These treatment capacity and technology plans were to have been submitted for review and approval to either the State or to EPA if the State does not have appropriate RCRA authorization. Upon approval of the plan, EPA or the State shall issue an administrative order under §3008(a), or equivalent State authority, requiring compliance with the approved plan. Any violation of the treatment capacity and technology plan and associated compliance order is subject to enforcement actions including penalties.

The FFCA also required DOE to develop a mixed waste inventory report describing mixed waste stored or generated at each facility in the DOE complex. The mixed waste inventory report must include information such as 1) a description of each mixed waste stream, 2) an estimate of the amount of mixed waste to be generated in the next 5 years, 3) the basis for determining whether the waste is hazardous (i.e., generator knowledge or testing), 4) current facility waste minimization efforts, and 5) whether or not the waste is subject to land disposal restrictions and what technologies are specified to meet those restrictions. The inventory reports also must include information on treatment capacity and technology such as an estimate of available treatment capacity for each type of mixed waste stored or generated at each facility and a description of each treatment unit considered, including proposed units.

DOE was also required to produce a report containing a national inventory of mixed waste treatment capacities and technologies, including estimates of the available treatment capacity for each waste and descriptions of technologies DOE intends to develop where there is no existing treatment capacity.

b. Application of RCRA to Federal Facilities

Federal facilities are required to comply with all Federal, State, interstate, and local solid and hazardous waste requirements (including statutes, regulations, permits, reporting requirements, and administrative and judicial orders and injunctions). Section 6001 of RCRA subjects Federal facilities to civil penalties and confirms that Federal employees are personally liable for RCRA criminal violations. Federal agencies also must reimburse EPA for the costs of TSDF inspections at their facilities, comply with procurement requirements, and cooperate with EPA by making available information on their agency waste management practices and hazardous waste facilities. Some key requirements potentially applicable to Federal facilities are summarized below.

§3002(b): Waste Minimization - Generators of hazardous wastes must certify on manifest, as required in §3002(a)(5), that a program is in place to reduce the volume or quantity and toxicity of their hazardous waste to the degree determined by the generator to be economically practicable. Additionally, the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator that minimizes the present and future threat to human health and the environment.

§3004(y): Munitions (FFCA §107) - FFCA §107 amended RCRA to require EPA, after consulting with the DoD and appropriate State officials, to issue a rule identifying when conventional and chemical military munitions become hazardous waste subject to Subtitle C of RCRA providing for the safe storage and transportation of such wastes. The Military Munitions Rule was discussed previously under Section a, RCRA Summary.

§3006: Authorized State Hazardous Waste Programs - EPA may authorize a State to administer and enforce its own hazardous waste program in lieu of the Federal hazardous waste program (also referred to as Subtitle C) if the State regulations governing hazardous waste are considered equivalent to or more stringent than the Federal regulations. The State also must demonstrate that it has sufficient capability to properly administer the program. If a State does not receive authorization to implement its own hazardous waste program, the Federal regulations remain effective and enforceable. Additionally, EPA maintains the right to enforce State regulations.

§3007: Inspections and Information Gathering - EPA is required to conduct annual RCRA inspections of Federal TSDFs. Authorized States also may conduct inspections. In general, inspections may be conducted by either EPA or a State and may be done jointly or separately.

FFCA amended §3007 to require EPA to conduct a comprehensive groundwater monitoring evaluation of all Federal facilities that are TSDFs. This evaluation was to take place during the first inspection of each facility, occurring after the enactment of FFCA, unless such an evaluation was conducted during the 12 months before the enactment of FFCA.

TSDFs, generators, handlers, or transporters of hazardous waste must, upon request of EPA or the State, furnish information relating to such waste and must, at all reasonable times, allow EPA/State access to and a copy of all records relating to such waste.

Federal facilities that are TSDFs are required to reimburse the EPA for the costs of the inspection of the facility.

§3008(h): Interim Status Corrective Action - Whenever, on the basis of any information available, the EPA Administrator determines that there is or has been a release of hazardous waste into the environment from a facility operating under §3005(e) of RCRA, the Administrator may issue an order requiring corrective action or other such response measures to protect human health or the environment. Also, the Administrator may commence a civil action in the district where the facility is located for appropriate relief, including a temporary or permanent injunction.

§3016: Inventory of Federal Agency Hazardous Waste Facilities - Federal agencies are required to compile, publish, and submit to EPA and authorized States an inventory of all facilities that they currently own or operate or have previously owned or operated at which hazardous waste is stored, treated, or disposed of, or was disposed of at any time. This inventory must be submitted every 2 years. This inventory includes a description of the location of each TSDF and the amount, nature, and toxicity of the hazardous waste at those sites. Information on the known extent of environmental contamination and the current status of the site also must be submitted. Beginning in 1996, responsibility for conducting the inventory was transferred from EPA's Office of Solid Waste to EPA's Federal Facilities Enforcement Office.

§3021: Mixed Waste Inventory Reports and Plan (FFCA §105) - FFCA §105, which was the basis for RCRA §3021, states that each DOE facility generating or storing mixed waste must have submitted to EPA, by April 1993, a mixed waste inventory report. Mixed waste requirements are discussed above in Section a, RCRA Summary.

§3023: Federally-Owned Treatment Works (FFCA §108) - The 1992 Federal Facility Compliance Act added §3023 titled Federally-Owned Treatment Works (FOTWs) to RCRA. Under §3023, FOTWs are defined as Federally-owned and operated wastewater treatment works that: 1) have an NPDES permit, and; 2) treat influent that is composed of a majority of domestic sewage. Section 3023 extends to FOTWs the so-called Domestic Sewage Exclusion (DSE) from the definition of "solid waste," provided the FOTW meets all the conditions set forth in §3023. Prior to the enactment of §3023, the DSE was only available to Publicly-Owned Treatment Works (POTWs). The DSE under RCRA allows POTWs to receive discharges of hazardous wastes from industrial sites as long as they are 1) mixed with domestic sewage as it goes to a POTW for treatment and 2) in compliance with requirements of the Clean Water Act (CWA) National Pretreatment program before entering the treatment works.

The rationale for the DSE is that the hazardous wastes are adequately regulated under the CWA National Pretreatment program and that management of such wastes under RCRA would be redundant. According to the legislative history behind §3023, Congress' intent was to treat FOTWs like POTWs. Section 3023 did not specifically require EPA to issue regulations or guidance to implement the section and to date none have been issued.

If the FOTW does not meet the conditions of §3023, then the DSE does not apply and the FOTW is required to manage the entire wastewater collection and treatment system as a RCRA hazardous

waste treatment facility; therefore the FOTW is subject to RCRA regulatory requirements and penalties.

§6001: Application of Federal, State, Interstate, and Local Laws to Federal Facilities (FFCA §102) - Congress has expressly waived sovereign immunity for Federal facilities with respect to any substantive or procedural requirements regarding the control, abatement, or management of solid or hazardous waste. FFCA amended RCRA §6001 by confirming that the waiver of immunity subjects Federal facilities to the full range of available enforcement tools (e.g., administrative orders, civil fines, and penalties) to ensure compliance and penalize violations. The section clarifies that Federal agents, employees, and officers are not personally liable for civil penalties arising from acts or omissions within the scope of their official duties; however, Federal employees are subject to criminal fines and imprisonment. Federal agencies cannot be held criminally liable.

FFCA also added §6001(b) to RCRA, which expressly authorizes EPA to bring administrative enforcement actions against Federal facilities.

§6002: Recycling and Procurement - Federal agencies must develop a procurement program to purchase recycled products to the maximum extent practicable and must recycle their wastes. Procurement programs, at a minimum, must include 1) a recovered materials preference program, 2) promotion of their preference program, 3) estimates of total percentage of recovered material in performance of a contract, and 4) an annual review and monitoring of the procurement program. In the case of paper products, the maximum use of postconsumer-recovered materials is required.

Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, provides more information on recycling and procurement requirements. Table II-2 in Section D.8 of this chapter provides a summary of this Order.

§6003: Cooperation with EPA - Federal agencies must assist EPA in implementing RCRA and shall promptly provide requested information.

§6004: Contractors - Federal agencies must ensure that their contractors comply with RCRA.

§9007: Underground Storage Tanks - Federal facilities are subject to the UST requirements established by Subtitle I of RCRA to the same extent that private facilities are subject to RCRA requirements under §9001 and §9010. These requirements are contained in 40 CFR Part 280.

c. EPA Enforcement

EPA enforcement authorities are set forth in RCRA §3008, §7003, and §9006. FFCA provided a complete and clear waiver of sovereign immunity with respect to all Federal, State, interstate, and local substantive and procedural RCRA requirements. FFCA also expressly provided EPA administrative enforcement authority over Federal facilities. Therefore, Federal facilities are subject to all administrative orders and all civil and administrative penalties and fines (including reasonable service charges), regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations.

FFCA also authorizes the imposition of criminal penalties against Federal employees who knowingly commit certain violations. Additionally, FFCA clarifies that Federal employees are subject to any criminal sanction including, but not limited to, any fine or imprisonment. In addition to EPA, States may seek sanctions against Federal employees for criminal violations of RCRA. Moreover, States and citizens are authorized under RCRA to enforce RCRA requirements as discussed below.

Assessment of Civil Penalties

FFCA clarified that EPA may assess civil penalties against Federal facilities for violations of the solid and hazardous waste and UST requirements. The penalties that may be assessed against Federal facilities are provided below. The civil monetary penalties listed have been adjusted pursuant to the Debt Collection Improvement Act of 1996.

< **§3008(a)(3): Compliance Orders -** Any penalty assessed in the order may not exceed $27,500 per day of noncompliance for each violation of a Subtitle C requirement.

< **§3008(c): Violation of Compliance Orders -** If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than $27,500 for each day of continued noncompliance with the order. In addition, the EPA Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

< **§3008(g): Civil Penalty -** Any person who violates any requirement of Subtitle C will be liable to the United States for a civil penalty of not more than $27,500 for each such violation. Each day of violation constitutes a separate violation.

FEDERAL FACILITIES ARE SUBJECT TO RCRA CIVIL PENALTIES

RCRA Solid and Hazardous Waste (Subtitle C) Fines and Penalties

, *Up to $27,500 per day in civil penalties*

, *Up to $5,500 per day for violating interim and substantial endangerment orders*

RCRA UST (Subtitle I) Fines and Penalties

, *Up to $11,000 per day in civil penalties*

, *Up to $27,500 per day for violating a Federal order*

< **§3008(h)(2): Interim Status Corrective Action Orders -** Any person named in an interim status corrective action order who fails to comply with the order may be assessed a civil penalty not to exceed $27,500 for each day of noncompliance with the order by the EPA Administrator and will be liable to the United States for payment of such penalty.

< **§7003(b): Violations of Interim and Substantial Endangerment Orders -** Any person who willfully violates, or fails or refuses to comply with any order of the Administrator under §7003(a) may, in an action brought in the appropriate United States district court to

enforce such order, be fined not more that $5,500 for each day in which such violation occurs or such failure to comply continues.

< **§9006(a)(3): Compliance Orders -** If a violator fails to comply with a compliance order issued under RCRA §9006 of Subtitle I within the time specified in the order, the violator will be liable for a civil penalty of not more than $27,500 for each day of continued noncompliance.

< **§9006(d)(1): Civil Penalties -** Any owner who knowingly fails to notify or submits false information pursuant to RCRA §9002(a) of Subtitle I will be subject to a civil penalty of not more than $11,000 for each tank for which notification is not given or for which false information is submitted.

< **§9006(d)(2): Civil Penalties -** Any owner or operator of an UST who fails to comply with any requirement or standard promulgated under §9003 and §9004 or under the provisions of §9003(g) of Subtitle I will be subject to a civil penalty of not more than $11,000 for each tank for each day of violation.

In addition to the civil penalties listed above, EPA inspectors may issue field citations with penalties against Federal agencies for UST violations. Additional information on EPA's UST Field Citation program can be found in *Guidance on Use of UST Field Citations at Federal Facilities* (February 1997). Also, for more information regarding assessment of civil penalties for UST violations, see *EPA Authority to Assess An Administrative Penalty Against Another Federal Agency Under RCRA Subtitle I* (June 16, 1998).

Criminal Enforcement

In addition to issuing and negotiating compliance orders and assessing civil penalties, sanctions may be sought against individual employees of Federal facilities for criminal violations of RCRA. Criminal fines may be imposed under RCRA §3008. Enforcement of criminal violations is authorized under RCRA §3008 for knowing violations and for knowing endangerments. Fines and penalties under RCRA for several types of criminal violations are specified below.

< **§3008(d): Criminal Penalties -** Any knowing violation of any material condition or requirement of a permit or of any applicable regulations or standards under Subtitle C may be subject to a fine of not more than $50,000 per day of violation and/or imprisonment not to exceed 2 years. The maximum punishment authorized by this section may be doubled with respect to both fine and imprisonment for a second conviction.

< **§3008(e): Knowing Endangerment -** Any person who knowingly places another person in imminent danger of death or serious bodily injury under Subtitle C will, upon conviction, be subject to a fine of not more than $250,000 and/or imprisonment not to exceed 15 years.

Imminent Hazard

According to RCRA §7003(a), the EPA Administrator, upon receipt of evidence, may bring suit in district court against any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment. The Administrator may bring suit in district court to restrain such person from such handling, storage, treatment, transportation, or disposal, and/or order such person to take such other action as may be necessary. The Administrator also may take other action including, but not limited to, issuing orders necessary to protect public health and the environment. Any person who willfully violates, fails, or refuses to comply with any order of the Administrator under §7003(a) in an action brought in a district court to enforce such order may be fined not more than $5,500 for each day in which said violation occurs or such failure to comply continues.

d. State Enforcement

RCRA §3006 and §9004 allows States to be authorized to administer RCRA hazardous waste programs and the UST programs if certain conditions are met.

Determining whether EPA or the State will take the enforcement lead in an authorized State depends on a number of factors, including whether the State is authorized to enforce the applicable provisions. However, EPA has the authority to independently enforce an authorized State's regulations. RCRA §6001(c) requires that all funds collected by a State from the Federal government for violations must be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement unless the State constitution or existing State laws prohibit it.

e. Tribal Enforcement

RCRA does not contain provisions which provide for American Indian Tribes to receive authorization for the RCRA program.

f. Citizen Enforcement

RCRA §7002(a) allows citizens to file a civil action (citizen suit) against a Federal agency that: 1) is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order; or 2) has contributed to or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment. In addition, RCRA §7002(a) allows citizens to file a civil action against the EPA Administrator for alleged failure to perform any non-discretionary act or duty.

RCRA §7002(b) excludes citizens from filing a civil action if the EPA Administrator or State has filed and is diligently prosecuting a civil or criminal action to require compliance with a permit, standard, regulation, condition, requirement, prohibition, or order. In addition, RCRA §7002(b) precludes citizens from filing a suit until notification is given to the Administrator, the State in which

the alleged violation occurred, and the facility alleged to be in violation of a permit, standard, regulation, condition, requirement, prohibition, or order. Additional conditions and requirements pertaining to citizen suits are set forth in RCRA §7002(a) through §7002(g).

g. EPA RCRA Regulations

Regulatory standards for RCRA are covered in 40 CFR Parts 240-282. Various sections of the RCRA regulatory program are outlined below.

EPA RCRA REGULATIONS

Solid Waste Disposal Program

40 CFR 257	Criteria for Classification of Solid Waste Disposal Facilities and Practices
40 CFR 258	Criteria for Municipal Solid Waste Landfills
40 CFR 260	Hazardous Waste Management System: General Provisions
40 CFR 261	Identification and Listing of Regulated Hazardous Wastes
40 CFR 262	Standards for Generators of Hazardous Waste

Hazardous Waste Regulatory Program

40 CFR 263	Standards for Transporters of Hazardous Waste
40 CFR 264	Standards for Owners/Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDFs)
40 CFR 265	Interim Status Standards for Owners/Operators of Hazardous Waste TSDFs
40 CFR 266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
40 CFR 267	Interim Standards for Owners/Operators of New Hazardous Waste Land Disposal Facilities
40 CFR 268	Land Disposal Restrictions
40 CFR 270	EPA Administered Permit Programs: The Hazardous Waste Permit Program
40 CFR 271	Requirements for Authorization of State Hazardous Waste Programs
40 CFR 272	Approved State Hazardous Waste Management Programs
40 CFR 279	Standards for the Management of Used Oil

Underground Storage Tank (UST) Program

40 CFR 280	Technical Standards and Corrective Action Requirements for Owners/Operators of Underground Storage Tanks (USTs)
40 CFR 281	Approval of State Underground Storage Tank Programs
40 CFR 282	Approved Underground Storage Tank Programs

h. EPA RCRA Policies and Guidance

There are many guidance documents and policies covering various aspects of RCRA. Selected RCRA documents and policies are listed below.

EPA RCRA POLICIES AND GUIDANCE

Commonly Asked Questions Regarding the Use of Natural Attenuation for Chlorinated Solvent Spills at Federal Facilities

Comprehensive Guideline for Procurement of Products Containing Recovered Materials (May 1996)

Criteria for Solid Waste Disposal Facilities: A Guide for Owners/Operators, EPA 530-SW-91-089

Environmental Fact Sheet: EPA Finalizes Regulations Under RCRA for Military Munitions, EPA 530-F-97-004 (February 1997)

EPA Authority to Assess An Administrative Penalty Against Another Federal Agency Under RCRA Subtitle I (June 16, 1998)

Final Enforcement Guidance on Implementation of the Federal Facility Compliance Act (July 6, 1993)

Final Enforcement Guidance on the Implementation of the Federal Facility Compliance Act, 58 FR 49044 (September 12, 1993)

Final Report of the Federal Facilities Environmental Restoration Dialogue Committee: Consensus Principles and Recommendations for Improving Federal Facilities Cleanup (Chapter 5, Funding and Priority Setting), EPA 540-R-96-013

Guidance on the Use of Section 7003 of RCRA, OECA (October 1997)

Guidance on Use of UST Field Citations at Federal Facilities (February 25, 1997)

Guide to EPA Materials on Underground Storage Tanks (UST # 106), EPA 510-B-94-007

Hazardous Waste Civil Enforcement Response Policy (March 15, 1996)

Identification of RCRA Requirements for Waste Minimization, Volume Reduction

Improving Communication to Achieve Collaborative Decision-Making, EPA 540-F-97-018 (June 1997)

Land Disposal Restrictions, OSWER Directive 9934-A (February 1991)

Memorandum: Coordination Between RCRA Corrective Action and Closure and CERCLA Site Activities, EPA (September 24, 1996)

EPA RCRA POLICIES AND GUIDANCE (continued)

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Rights-of-Way on Contiguous Properties; Final Rule, 62 FR 6622-6657 (February 12, 1997)

The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities, 60 FR 14641-14645 (March 20, 1995)

The National Response Team's Integrated Contingency Plan Guidance, 61 *FR* 28642 (June 5, 1996)

Policy for Superfund Compliance With the RCRA Land Disposal Restrictions, OSWER Directive 9347.1-02, EPA (April 17, 1989)

Procurement Guidelines for Government Agencies, EPA 530-SW-91-011 (December 1990)

RCRA Civil Penalty Policy, OSWER Directive #9900. 1A (October, 1990)

RCRA Corrective Action Plan, EPA 520-R-94-004 (May 1994)

RCRA Enforcement Policy Compendium, OWPE92 RE001(c) (September 1992)

RCRA Facility Assessment or Equivalent Investigation Requirements at RCRA Treatment and Storage Facilities, EPA (January 4, 1988)

RCRA Orientation Manual, 1990 edition, EPA 530-SW-90-036 (August 15, 1995)

RCRA Permit Policy Compendium (Complete Set), Update Package #4 PB95-243-036 (July 1995)

RCRA Public Involvement Manual, EPA 530-R-93-006 (September 15, 1993)

Test Methods for Evaluating Solid Waste, Physical/Chemical Methods: Update 2B, SW-46, PB95-234-480 (January 1995)

Understanding the Hazardous Waste Rules: A Handbook for Small Businesses - 1996 Update, EPA 530-K-95-001 (June 1996)

Waste Analysis at Facilities That Generate, Treat, Store, and Dispose of Hazardous Waste: A Guidance Manual, OSWER Directive 9938.4-03 (April 1994)

Waste Minimization National Plan: Reducing Toxics in Our Nation's Waste, EPA 530-F-97-010 (September 1997)

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on RCRA requirements. Appendix A provides the names and phone numbers for each EPA FFC. FFC roles and responsibilities are discussed in Chapter VII.

Federal Facility 3016 Inventory Hotline: This Hotline is available to answer questions regarding 3016 reporting requirements. To contact the Hotline, call toll-free 1-888-219-0522.

RCRA, Superfund, and EPCRA Hotline: This Hotline is a publicly accessible service that provides up-to-date information on several EPA programs and provides copies of regulations that have appeared in the *Federal Register*. The Hotline responds to factual questions on Federal EPA regulations developed under the Resource Conservation and Recovery Act, including the Underground Storage Tank program, Superfund, Emergency Planning and Community Right-to-Know Act, and the Oil Pollution Act. The Hotline also provides information on Section 112(r) of the Clean Air Act and on Spill Prevention, Control, and Countermeasures regulations. To speak with Information Specialists about regulatory questions or to order documents, call the Hotline toll-free at 1-800-424-9346. In the Washington, D.C. area, call (703) 412-9810.

RCRA Docket: The RCRA Docket Information Center (RIC) indexes and provides public access to all regulatory material supporting EPA's actions under RCRA and disseminates current technical and non-technical publications. Materials kept at the RIC include background and technical documents supporting rulemaking, guidance documents, directives, delisting petitions, publications and memoranda, and Health and Environmental Effects Profiles. To contact the RIC, call (703) 603-9230.

Alternative Treatment Technology Information Center: The Center is a comprehensive information retrieval system containing data on alternative treatment technologies for hazardous waste. This electronic bulletin board includes features such as news items, bulletins, and special interest conferences and is available free of charge to Federal, State, local, and private sectors involved in site remediation. The Center can be accessed through the National Technical Information Service (NTIS) at (919) 541-5742. For questions on accessing the system, contact NTIS at (703) 908-2137.

Methods Information Communications Exchange (MICE): MICE provides guidance on questions relating to *Test Methods for Evaluating Solid Waste - Physical/Chemical Methods (SW-846)*. Contact MICE at (703) 821-4690 by leaving a message on its 24-hour answering machine. Questions are answered within 1 business day by specialists who are knowledgeable in SW-846 testing procedures.

Hazardous Waste Docket: The Docket manages information concerning Federal facilities and their compliance activities and makes certain resource documents available. The Docket can be reached at (703) 603-9232.

Federal Agency Hazardous Waste Compliance Docket: The Federal Agency Hazardous Waste Compliance Docket (Docket) identifies Federal facilities that may pose a risk to public health and the environment and compiles and maintains the information submitted to EPA on these facilities under §120(c) of CERCLA and §3016 of RCRA. To contact the Docket, call toll-free 1-800-548-1016.

FOR MORE INFORMATION (continued)

Office of Solid Waste and Emergency Response Home Page: http://www.epa.gov/epaoswer

Office of Solid Waste Home Page: http://www.epa.gov/epaoswer/osw/index.htm

Office of Underground Storage Tanks Home Page: http://www.epa.gov/swerust1/index.htm

Mixed Waste Team Home Page: http://www.epa.gov/radiation/mixed-waste/

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9. Safe Drinking Water Act

Overview: The Safe Drinking Water Act (SDWA) was enacted in 1974 because safe drinking water is essential to the protection of public health. SDWA directs EPA to set goals for the level of contaminants in drinking water and establishes standards requiring water supply system operators to come as close as possible to meeting those goals by using the best available technology that is economically and technologically feasible. SDWA directs the EPA Administrator to develop 1) national primary drinking water regulations that incorporate maximum contaminant level goals and maximum contaminant levels or treatment techniques and 2) underground injection control regulations to protect underground sources of drinking water. SDWA also authorizes sole-source aquifer demonstration projects and sets forth procedures for establishing State wellhead protection area programs. SDWA has been amended five times since it was originally enacted, with the latest reauthorization taking place in August 1996. The August 1996 amendments include new prevention approaches, improved consumer information, changes to improve the regulatory program, and innovative funding for States and local water systems. In addition, the amendments expand the waiver of sovereign immunity for the Federal government with respect to all Federal, State, and local requirements. The 1996 amendments also enhance EPA's authority to assess administrative penalties if a Federal agency has violated an applicable SDWA requirement, provide citizens the opportunity to obtain judicial review of the penalty orders, and streamline the process for issuing compliance orders. The statute can be found at 42 U.S.C. §300f et seq. Regulations addressing SDWA are found in 40 CFR Parts 141-149.

FEDERAL FACILITY RESPONSIBILITIES UNDER SDWA INCLUDE:

- Complying with all primary drinking water regulations and applicable underground injection control requirements
- Notifying persons served by a public water system if the system fails to meet primary drinking water standards
- Ensuring that only lead-free pipes are used in either the installation or repair of a public water system
- Consulting with any State, municipal, or local government if that area is preparing a management plan to participate in the sole-source aquifer demonstration program
- Complying with all State program requirements
- Ensuring that there is an adequate available supply of chemicals necessary for treatment of water
- Complying with EPA inspections

a. SDWA Summary

SDWA protects public drinking water systems from harmful contaminants and underground sources of drinking water from improper underground injection. Its principal objectives are to:

< Protect human health and ensure the aesthetic quality of drinking water;

< Protect underground sources of drinking water; and

< Establish programs to protect sole-source aquifer and wellhead protection areas.

To reach these objectives, SDWA established the following three programs:

< *Public Water Supply System*: Sets two groups of drinking water standards, referred to as primary and secondary standards, to protect human health and ensure the aesthetic quality of drinking water.

< *Lead in Drinking Water Cooler Program*: Creates a list of drinking water coolers that contain lead in either the cooler's lining or other components and helps schools identify drinking water coolers that may be contaminating the water supply with lead.

< *Underground Injection Control Program*: Regulates the subsurface disposal of wastewaters through an injection control well and protects underground sources of drinking water through the establishment of State wellhead and sole-source aquifer protection programs.

< *Sole-Source Aquifer/Wellhead Protection Programs*: Establishes procedures for demonstration programs to develop, implement, and assess critical aquifer protection areas already designated as sole-source aquifers and for State programs to protect wellhead areas around public water system wells.

Section 300f(4)(A) defines a "Public Water System" (PWS). In general, a PWS is a system that provides drinking water through pipes or other conveyances, with at least 15 service connections or regularly serves at least 25 individuals. States may accept responsibility for enforcing the PWS regulations provided they adopt regulations at least as stringent as the national requirements, develop adequate procedures for enforcement, maintain records, and create a plan for providing emergency water supplies. When a PWS in a State with primary enforcement authority does not comply with regulations, EPA notifies the State and the water system and may provide advice and technical assistance to bring the system into compliance. If the State fails to take appropriate enforcement action after 30 days, EPA is authorized to issue an administrative order and commence a civil action.

Public water systems in each State are subject to SDWA except in cases in which the PWS:

< Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

< Obtains all of its water from, but is not owned or operated by, a PWS to which such regulations apply;

< Does not sell water to any person; and

< Is not a carrier that conveys passengers in interstate commerce.

Water suppliers subject to regulations under SDWA are required to establish and maintain records, monitor water quality, and provide any information that EPA requires to carry out the requirements of SDWA. EPA also may enter and inspect the property of water suppliers. Failure to comply with these provisions may result in criminal penalties.

b. Application of SDWA to Federal Agencies

The 1996 SDWA amendments clarify that Federal agencies must comply with all Federal, State, interstate, and local safe drinking water requirements. As amended, SDWA §1447(a) provides that Federal agencies "1) owning or operating any facility in a wellhead protection area; 2) engaged in any activity at such facility resulting, or which may result, in the contamination of water supplies in any such area; 3) owning or operating any public water system; or 4) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water" shall be subject to and comply with all substantive and procedural Federal, State, interstate, and local requirements to the same extent as any person. Section 1447 specifically subjects Federal agencies to SDWA civil and administrative orders and penalties and confirms that Federal employees may be personally liable for SDWA criminal violations. A summary of SDWA requirements is provided below.

§1412: National Drinking Water Regulations - EPA has the authority to publish a maximum contaminant level goal (MCLG) and promulgate a national drinking water regulation, including a maximum contaminant level (MCL), if the EPA Administrator determines that 1) a contaminant adversely affects human health, 2) the contaminant is known to occur frequently at levels high enough to cause concern for public health, and 3) in the Administrator's judgment, regulating the contaminant would permit a public health risk reduction.

§1413: State Drinking Water Regulations - A State may obtain primary PWS enforcement authority under this section.

§1414: Enforcement of Drinking Water Regulations - Federal agencies that violate an applicable requirement of SDWA are subject to administrative compliance orders under §1414. Additionally, Federal agencies that own or operate public water systems that fail to meet a national primary drinking water requirement or fail to perform required monitoring are required to notify persons (in the case of a violation with the potential to have serious adverse effects on public health within 24 hours) served by those public water systems of such failures.

Each State with primary enforcement authority is required to prepare an annual report on violations and must publish and distribute summaries of the report. The first report was due on January 1,

1998. In turn, EPA must publish annual reports summarizing and evaluating the reports submitted by the States and by PWS serving Indian Tribes.

Within 24 months of the enactment of the 1996 amendments, EPA is required to issue regulations requiring each community water system to mail to each customer of the system at least once annually a report (referred to as a *Consumer Confidence Report*) on the level of contaminants in the drinking water system. The report will include 1) information on the source of drinking water, 2) brief definitions of terms, 3) the MCLG and MCL, 4) the level of any regulated contaminants found, 5) information on health effects, and 6) information on levels of unregulated contaminants.

§1415: Variances - A State with primary enforcement responsibility for PWS may grant variances from an applicable national primary drinking water regulation to PWS within its jurisdiction. Requests for variances may be made due to the reasonable unavailability of raw water sources. A variance may be issued only on the condition that the system install the best available technology, treatment techniques, or other means to procure usable water (taking cost into consideration).

If a State grants a variance to a PWS, the State will prescribe, at the time the variance is granted, a schedule for compliance and additional control measures. Schedules or other requirements stipulated under a variance may be enforced by the State as if the schedule or requirement was part of a national primary drinking water regulation.

§1416: Exemptions - A State with primary enforcement responsibility may exempt a PWS within its jurisdiction from any MCL or treatment technique requirement of an applicable national primary drinking water regulation. Such an exemption would be granted due to compelling factors (e.g., economic conditions, including qualification of the PWS as a system serving a disadvantaged community) and/or to a system that was in operation prior to the effective date of the regulation and management or restructuring changes (or both) cannot reasonably be made that will result in compliance with SDWA or, if compliance cannot be achieved, improve the quality of the drinking water. The exemption will be granted only if it does not result in an unreasonable risk to health.

Exemptions are effective for 3 years and exemption renewals are limited to a total of 6 years. A PWS may not receive an exemption under this section if the system was granted a small systems variance under SDWA §1415(e). If a State does not have primary enforcement responsibility for PWS, EPA has the authority to exempt such systems in the same manner as the State.

§1417: Prohibition on Use of Lead Pipes, Solder, or Flux - Federal facilities must comply with the requirements of this section. Any pipe, solder, or flux that is used after June 19, 1986, in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption must be lead-free. This requirement does not apply to leaded joints necessary for the repair of cast iron pipes.

Within 2 years of enactment of the 1996 amendments, it will be unlawful for 1) any person to introduce into commerce any pipe or any pipe or plumbing fitting or fixture that is not lead-free, except for a pipe that is used in manufacturing or industrial processing; or 2) any person engaged in the business of selling plumbing supplies, except manufacturers, to sell solder or flux that is not lead-free; or 3) for any person to introduce into commerce any solder or flux that is not lead-free, unless

it bears a label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

Public water systems are required to identify cases of potential lead contamination of drinking water and provide notice to persons who may be affected by lead contamination of their drinking water.

§1421-§1423: Applicable Underground Injection Control (UIC) Program - Federal agencies are subject to the State and Federal UIC requirements imposed pursuant to these sections.

§1424: Interim Regulation of Underground Injections - Any person may petition EPA to designate an area of a State (or States) within which no new underground injection wells may be operated for a specified time. EPA may designate such an area if the area contains a sole-source aquifer or principal drinking water source for the area that, if contaminated, would create a significant hazard to public health.

EPA would designate such an area, unless EPA has issued a permit for the operation of an injection well. EPA may issue a permit only if operation of an injection well would not contaminate the aquifer and create a public health hazard.

§1427: Sole-Source Aquifer Demonstration Program - A State, municipality, or local government or political subdivision having jurisdiction over an area that has been identified as a critical aquifer protection area may apply to EPA to select the area for a demonstration program. The applicant must prepare a comprehensive management plan to maintain the quality of the groundwater in the area during the demonstration. During the preparation of the plan, the applicant must consult appropriate officials of other agencies (including Federal agencies) that have jurisdiction over lands and waters within the identified area.

§1428: State Programs to Establish Wellhead Protection Areas - Federal agencies with jurisdiction over any potential source of contaminants that are identified by a State program pursuant to the provisions of the wellhead protection regulations must comply with all State program requirements for protecting the water supply within wellhead protection areas from contaminants.

§1429: Ground Water Grants for States - EPA may issue grants to States to develop programs to ensure coordinated and comprehensive protection of groundwater resources within the State.

§1431: Imminent and Substantial Endangerment - A Federal facility may be subject to an action under this section in the event EPA finds an imminent and substantial endangerment due to the presence or likely presence of a contaminant in a PWS or an underground source of drinking water.

§1441: Assurance of Availability of Adequate Supplies of Chemicals Necessary for Treatment of Water - If the amount of a chemical or substance necessary to treat water is not reasonably available, Federal facilities (and other entities) may apply to EPA for a certification of need. Presidential orders to make the required chemical or substance available do not apply to manufacturers, producers, or processors who use the chemical or substance solely for their own use and not for distribution or sale.

§1445: Records and Inspections - Every PWS (including Federal facilities) that supplies water and that is, or may be, subject to primary drinking water regulations or applicable UIC programs must establish and maintain records, prepare reports, and conduct monitoring activities. Systems also must give EPA information to assist in establishing regulations, determining whether the facilities are complying with SDWA (when administering any program of financial assistance), evaluating the health risks of unregulated contaminants, and advising the public of such risks.

A PWS that monitors unregulated contaminants must report the monitoring results to the primary enforcement authority. In addition, the primary enforcement authority must notify persons served by the system and EPA of the availability of such results.

Systems supplying less than 150 service connections satisfy these notification requirements by providing water samples or the opportunity for sampling according to EPA rules.

EPA may enter any establishment, facility, or other property of a PWS system to determine whether the supplier is complying with the regulations. To determine compliance, EPA has access to any records, reports, or information of a grantee. EPA is not authorized, however, to enter an establishment if the facility is located in a State that has primary enforcement responsibility, unless EPA consults with the State agency first.

§1447: Waiver of Sovereign Immunity, Administrative Penalty Orders, and Public Review - This section provides an enhanced and comprehensive waiver of Federal sovereign immunity, subjecting Federal agencies to all Federal, State, interstate, and local SDWA requirements. Additionally under this section, Federal agencies are subject to administrative penalty orders for violation of any applicable requirement of SDWA or imposed pursuant to a violation of an administrative compliance or imminent and substantial endangerment order.

The President may exempt any source under the jurisdiction of any Federal agency if the exemption is in the paramount interest of the United States. No exemptions will be granted because of the lack of an appropriation, unless the President specifically requested the appropriation as part of the budgetary process and the Congress failed to make the appropriation available.

§1450: General Provisions - EPA, with the consent of the head of any Federal agency or facility, may utilize officers and employees of the agency or facility, as deemed necessary, for assistance in enforcing SDWA.

§1453: Source Water Assessments - A source water assessment program must delineate the boundaries of the source water protection area, inventory the contaminant sources, and perform a susceptibility analysis to determine the risk that the contaminants pose to the public water system.

FEDERAL FACILITIES ARE SUBJECT TO SDWA FINES AND PENALTIES

, *Civil administrative penalties of up to $25,000 per day per violation can be assessed as specified in §1447(b).*

c. EPA Enforcement

Just as Federal agencies are subject to and must comply with SDWA requirements to the same extent

as other persons, they are subject to EPA administrative enforcement actions as are other persons. Under the 1996 SDWA amendments, EPA obtained significantly enhanced enforcement authorities. Congress streamlined the process EPA must follow when issuing PWS compliance orders under §1414 and clearly expressed EPA's administrative penalty authority over Federal agencies in §1447. SDWA §1447 now provides the blanket authority for EPA to issue penalty orders to Federal agencies for violations of any requirement of SDWA or requirement or schedule imposed by an administrative compliance order, an imminent and substantial endangerment order, or other administrative order. Thus, although the UIC compliance orders are not subject to the Administrative Procedures Act, EPA must give the person to whom the UIC order is directed notice and an opportunity to request a hearing on the order. Failure to comply with a UIC compliance order would subject the Federal agency to administrative penalties under §1447. For more information on EPA's Federal facility penalty order authority under SDWA, see the *Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996* (May 29, 1998). For a description of the guidance, see Chapter V, Sections A.1 and B.1.

Emergency Powers

SDWA §1431 gives the EPA Administrator broad authority to act to protect the health of persons in situations where drinking water is or may become contaminated. Specifically, §1431 provides that, upon receipt of information that a contaminant that is present in or likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, the Administrator may take any action she deems necessary to protect human health. The Administrator may take action under this section only if the State and local authorities have not acted to protect the health of persons. Then, to the extent the Administrator deems practicable in light of the imminent and substantial endangerment, she must consult with the State and local authorities to confirm the factual situation and any action the State or local authorities are or will be taking. Actions the Administrator may take under this section include, but are not limited to, issuing administrative orders, including orders for the provision of alternative water supplies and commencing civil action for appropriate relief, including a restraining order or permanent or temporary injunction. SDWA §1431(b) subjects persons who violate an order issued under §1431(a) to civil judicial action and a civil penalty not to exceed $5,000 for each day the violation occurs or failure to comply continues. Federal agencies may be subject to administrative penalties under §1447 for violation of an order issued under §1431.

Criminal Enforcement

In addition to civil liability, sanctions may be sought against individual employees of Federal agencies for criminal violations of SDWA. Enforcement of criminal violations is authorized under different sections of SDWA, which establish fines and penalties for several types of criminal violations as specified below.

< **§1423(b)(2):** Any person who violates any requirement of an applicable UIC program, or an order requiring compliance, and if the violation is willful, such person may, in addition to, or in lieu of the civil penalty, be imprisoned for not more than 3 years and/or fined in accordance with Title 18.

< **§1432(a): Tampering -** Any person who tampers with a PWS shall be imprisoned for not more than 5 years and/or fined in accordance with Title 18.

< **§1463(b)(c): Criminal penalty -** No person may sell in interstate commerce or manufacture for sale in interstate commerce any drinking water cooler that is not lead-free, including a lead-lined drinking water cooler. Any person who knowingly violates this prohibition shall be imprisoned for not more than 5 years and/or fined in accordance with Title 18.

d. State Enforcement

According to SDWA §1447, Federal agencies are subject to all applicable State requirements. In addition, States may exercise primary enforcement authority under SDWA §1413 if certain criteria are met. If the State does not properly enforce SDWA, EPA may assume primary enforcement responsibility.

Under SDWA §1422, States have primary enforcement responsibility for underground water sources if the State can meet the requirements for authorization to assume primary enforcement responsibility. Section 1422 also provides that EPA may implement an applicable UIC program in a State if the State fails to submit an application to assume primary enforcement responsibility or if the EPA Administrator determines that the State's program does not meet the requirements.

e. Tribal Enforcement

SDWA §1422 provides for an American Indian Tribe to assume primary enforcement responsibility for an UIC program if the Tribe can meet the applicable requirements. Until a Tribe assumes primary enforcement responsibility, the currently applicable UIC program shall continue to apply.

Under SDWA §1451, EPA is authorized to treat Indian Tribes as States. EPA may delegate primary enforcement responsibility to the Tribes for public water systems and UIC sources if certain criteria are met.

f. Citizen Enforcement

Citizen Suits

SDWA §1449(a) allows citizens to file a civil action (civil suit) against any Federal agency that is alleged to be in violation of any SDWA requirement. In addition, SDWA §1449(a) allows citizens to file a civil action against the EPA Administrator for alleged failure to perform any non-discretionary act or duty.

SDWA §1449(b) excludes citizens from filing a civil action if EPA, the Attorney General, or a State has filed and is diligently prosecuting a civil action; however, citizens can intervene in the case. In addition, SDWA §1449(b) precludes citizens from filing a suit until notification is given to EPA, the State in which the alleged violation occurred, and the facility alleged to be in violation of a SDWA requirement. Additional conditions and requirements pertaining to citizen suits are set forth in SDWA §1449(a) through (e).

Judicial Review

Under SDWA §1447, an interested individual may obtain judicial review of an EPA administrative penalty order issued to a Federal agency. The individual can seek judicial review in the U.S. District Court for the District of Columbia or in the U.S. District Court for the district in which the violation is alleged to have occurred.

g. EPA SDWA Regulations

Federal SDWA regulations are set forth in 40 CFR Parts 141 through 149. Various sections of the SDWA regulatory program are presented in the box below.

EPA SDWA REGULATIONS

General

40 CFR 22 and 59	Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and Revocation, Termination, or Suspension of Permits, Proposed Rule, 63 FR 37 (February 25, 1998)

National Primary Drinking Water Program

40 CFR 141	National Primary Drinking Water Regulations
40 CFR 142	National Primary Drinking Water Regulations Implementation
40 CFR 143	National Secondary Drinking Water Regulations

Underground Injection Control Program

40 CFR 144	Underground Injection Control (UIC) Program
40 CFR 145	State UIC Program Requirements
40 CFR 146	Underground Injection Control Program: Criteria and Standards
40 CFR 147	State Underground Injection Control Programs
40 CFR 149	Sole-Source Aquifers

h. EPA SDWA Policies and Guidance

Many policies and guidance documents address various aspects of SDWA. A partial list of available SDWA publications is provided in the box below.

EPA SDWA POLICIES AND GUIDANCE

Definition of a Public Water System in SDWA Section 1401(4) as Amended by the 1996 SDWA Amendments, 63 FR 41939 - 41946 (August 5, 1998)

Drinking Water Handbook for Public Officials, EPA 810-B-92-016 (1992)

Fact Sheet: National Primary Drinking Water Standards, EPA 810-F-90-021 (1990)

Fact Sheet: National Secondary Drinking Water Standards, EPA 570-9-91-019FS (1991)

Final Guidance on Emergency Authority Under Section 1431 of the Safe Drinking Water Act, signed on September 27, 1991 by James R. Elder, Director, Office of Ground Water and Drinking Water and Frederick Stiehl, Enforcement Counsel, Office of Enforcement

Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996, (May 29, 1998)

Guide for Conducting Contaminant Source Inventories for Public Drinking Water Supplies: Technical Assistance Document, EPA 570-9-91-033 (1991)

Office of Groundwater and Drinking Publications, EPA 810113-95-004

Safe Drinking Water Act: 1986 Amendments, EPA 570-9-86-002 (1986)

Safe Drinking Water Act Amendments of 1996, General Guide to Provisions, EPA 810-S-96-001 (August 1996)

Summary of State and Federal Drinking Water Standards and Guidelines, EPA 570-R-90-019 (1990)

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on SDWA requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

Safe Drinking Water Hotline: EPA operates the toll-free Safe Drinking Water Hotline to answer questions concerning SDWA. The Hotline provides up-to-date information on recently promulgated standards and regulations that have appeared in the *Federal Register*. To contact the Hotline, call 1-800-426-4791.

Water Docket: The Water Docket indexes and provides public access to all regulatory material supporting EPA's actions under SDWA and disseminates information concerning, among other things, health advisories. Background and technical documents pertinent to each stage of rulemaking are maintained by the Docket. To contact the Docket, call (202) 260-3027.

Office of Ground Water and Drinking Water Home Page: http://www.epa.gov/ogwdw/

Source Water Protection Home Page: http://www.epa.gov/ogwds/sdwa/sourcewa.html

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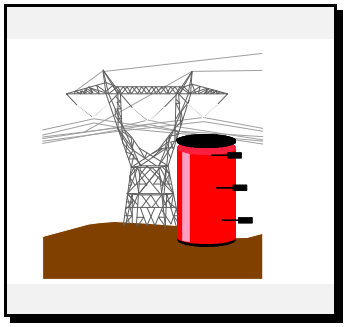
10. Toxic Substances Control Act



Overview: The Toxic Substances Control Act (TSCA) was enacted in 1976 to regulate commerce and protect human health and the environment by requiring testing of and establishing use restrictions on certain potentially hazardous chemicals. Unlike many environmental statutes that focus only on waste management, TSCA grants EPA authority to regulate the entire life cycle of a chemical, from manufacture to disposal. The objectives of TSCA include developing adequate data to determine the health and environmental effects of chemicals and controlling the use of any chemicals that present an unreasonable health or environmental risk.

TSCA contains four titles: Title I - Control of Toxic Substances; Title II - Asbestos Hazard Emergency Response; Title III - Indoor Radon Abatement; and Title IV - Lead Exposure Reduction. Under Title I (§6), EPA banned the manufacture (production and importation) of polychlorinated biphenyls (PCBs) and promulgated rules on PCB disposal and marking. Additional rules were developed on inspections, storage, and use of transformers. In addition to PCBs, more than 60,000 chemical substances are subject to Title I requirements. Title II requires inspection of schools for all suspected asbestos-containing building materials and development of management plans and requires that persons performing certain asbestos-related activities be trained and accredited. Title III establishes the national long-term goal of having indoor radon levels equal to or less than radon levels in ambient outside air. Under Title IV, EPA promulgated rules governing training, accreditation, and certification requirements for individuals engaged in lead-based paint activities. Regulations established under Title IV also set work practice standards for lead-based paint activities to ensure that they are performed effectively, reliably, and safely.

Despite its wide authority, TSCA generally is used for specific purposes, such as regulating certain types of substances (e.g., asbestos, PCBs, radon, and lead). TSCA regulatory authority and implementation rest predominantly with the Federal government. However, several States have their own, more stringent programs similar to TSCA and may, in limited circumstances, be delegated certain TSCA responsibilities. For example, TSCA Title IV allows States the flexibility to develop accreditation and certification programs and work practice standards for inspection, risk assessment, and abatement that are at least as protective as existing Federal standards. TSCA can be found at 15 U.S.C. §2601 et seq. TSCA regulations are codified in 40 CFR Parts 700-799, with Part 745 detailing lead hazard reduction regulations and Part 761 detailing management requirements for PCBs. Part 761 provides the definition, storage and disposal, cleanup policy, exemptions, general recordkeeping, and reporting requirements for PCBs. Examples of Federal facility responsibilities under TSCA are listed on the next page.

FEDERAL FACILITY RESPONSIBILITIES UNDER TSCA INCLUDE:

- Marking and labeling of certain polychlorinated biphenyls (PCBs) and PCB-containing equipment
- Properly storing, packaging, importing, and disposing of PCBs and PCB-containing equipment
- Preparing and maintaining annual document logs for facilities managing over 45 kilograms or 99.4 pounds of PCBs, one or more PCB transformers, or 50 or more PCB large high- or low- voltage capacitors
- Preparing and maintaining PCB disposal manifests, certificates of destruction, and exception reports
- Complying with minimum training standards for personnel engaged in asbestos abatement activities as established in the Model Accreditation Plan
- Conducting lead abatement projects using properly trained and certified contractors in conformance with documented methodologies appropriate to lead-based paint activities
- Measuring radon levels within buildings and mitigating unsafe exposure
- Maintaining records and documentation
- Providing disclosure at time of sale or lease of residential properties built before 1978
- Proper training and licensing prior to performing lead-related activities
- Implementing the Asbestos Hazard Emergency Response Act (AHERA) requirements in schools operated by the Department of Defense, pursuant to §203(l) of AHERA
- Conducting an inventory and assessment of asbestos-containing material at the facility
- Properly handling, storing, transporting, and disposing of asbestos

a. TSCA Summary

TSCA protects human health and the environment by requiring the testing of specific chemicals and establishing regulations that restrict the manufacturing, processing, and use of such chemicals. TSCA authorizes EPA to:

- Gather basic information on chemical risks from chemical manufacturers and processors;
- Require companies to test selected chemicals for toxic effects;
- Review most new chemicals before they are manufactured; and

< Prevent unreasonable risks by requiring control actions for the use of chemicals, ranging from hazard warning labels to the outright ban on the manufacture or use of certain chemicals.

The control actions that can be taken by EPA under TSCA are comprehensive and cover the manufacture, use, distribution in commerce, and disposal of chemical substances and mixtures.

Four chemical substances receive special attention under TSCA—PCBs, asbestos, radon, and lead. PCBs were singled out by Congress in 1976 for both immediate regulation and phased withdrawal from the market. The Asbestos Hazard Emergency Response Act (AHERA) was enacted and then amended in 1990 to modify EPA's school asbestos remediation program. Radon received special attention in 1988 when Congress set as a long-term national goal that indoor radon levels are not to exceed outside ambient levels. In 1992, Congress enacted TSCA Title IV to create a national program promoting the safe reduction of hazards from lead in buildings and other structures.

Eight product categories are exempt from TSCA's regulatory authorities—pesticides, tobacco, nuclear material, firearms and ammunition, food, food additives, drugs, and cosmetics. Many of these product categories are regulated under other Federal programs.

b. Application of TSCA to Federal Facilities

Substances subject to TSCA restrictions include PCBs, chlorofluorocarbons (CFCs), asbestos, and certain hexavalent chromium compounds. Operations at Federal facilities typically involve management of materials regulated under TSCA. Older electric equipment, such as transformers, capacitors, and fluorescent ballasts, typically contain PCBs. Pre-1987 structures were often built using asbestos materials. Under TSCA, Federal facility requirements range from basic reporting and recordkeeping to specific asbestos and radon requirements. The regulation of PCBs, asbestos abatement, and lead are the primary ways that Federal facilities are impacted by TSCA. Specific activities required by TSCA at Federal facilities include use of or disposal of equipment containing PCBs, performing lead and asbestos abatement surveys and activities, and managing locations with potentially significant radon levels.

Unless the building being renovated is a school building, TSCA asbestos regulations only require that persons performing asbestos abatement activities be properly trained and certified. Section 203(l) of AHERA directs the Department of Defense (DoD) to implement the Act's requirements in schools operated by DoD. This involves school building inspections, the preparation of asbestos management plans, and various training and work practice requirements for asbestos abatement and general building maintenance. The required work practices for building modifications are found in the asbestos provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations. NESHAP regulations are carried out under the Clean Air Act (CAA). For more information on CAA and NESHAP requirements, see Section B.1 of this chapter.

Although PCBs are not usually classified as Resource Conservation and Recovery Act (RCRA) wastes, they are subject to manifesting and notification requirements similar to those under RCRA. For more information on RCRA, see Section B.8 of this chapter.

Key TSCA requirements are summarized below.

Title I - Toxic Substances

§4: Testing of Chemical Substances and Mixtures - EPA has the authority to require manufacturers or processors of certain existing chemicals (i.e., those already being distributed in commerce) to test the health and environmental effects of such chemicals. EPA exercises this authority only when it finds that 1) the chemical involved may present an unreasonable risk of injury to health or the environment, 2) the chemical will be produced in substantial quantities and is expected to enter the environment in substantial quantities, 3) insufficient data are available to reasonably predict the chemical's effects on health and the environment, and 4) testing is deemed necessary to obtain the needed data.

An Interagency Testing Committee of governmental experts advises EPA on what chemical substances should be tested. EPA must initiate a rulemaking to invoke the testing requirements for designated chemicals.

§5: Manufacturing and Processing Notices - Manufacturers or importers of new chemicals must give EPA a 90-day advance notification of their intent to manufacture or import new chemicals, except for those chemical categories specifically excluded. Section 8 defines "new" as those chemicals that are not included on the published list of existing chemicals. Federal facilities can obtain this list by contacting the National Technical Information Service (NTIS). For more information on NTIS, see Section F of Chapter VI.

EPA may designate the use of an existing chemical as a significant new use, based on consideration of several factors, including the anticipated extent and type of exposure to human beings or the environment.

§6(e): Polychlorinated Biphenyls - Section 6(e) of TSCA requires the Administrator of EPA to control the manufacture, processing, distribution in commerce, use, and disposal of PCBs. Section 6(e)(2) of TSCA provides that no person may manufacture, process, distribute in commerce or use any PCB in any manner other than in a totally enclosed manner. Section 6(e)(3) provides that no person may manufacture any PCB after January 1, 1979, or process or distribute in commerce any PCB after July 1, 1979, except to the extent that EPA specifically exempts such activities.

§8(a): Reports - Under §8(a), the Preliminary Assessment Information Reporting (PAIR) Rule, producers and importers of a chemical substance or mixture listed under §8(a) at 40 CFR Part 712 are required to submit to EPA certain specified production, importation, and exposure information. Under §8(a), EPA maintains the TSCA Inventory which is a list of existing chemical substances (i.e., chemicals produced, imported, or processed in the United States). There are certain §8(a) inventory update rule reporting requirements found at 40 CFR Part 710 that pertain to commercial producers or importers of certain chemicals listed on the TSCA Inventory. A Federal facility is subject to the §8(a) PAIR Rule to the extent the facility produces or imports a TSCA §8(a)-listed chemical substance or mixture.

§8(c): Records - Chemical manufacturers and certain processors are required to maintain and, when requested, report to EPA "allegations" of significant adverse health and/or environmental reactions to TSCA-subject chemicals or mixtures. Records of such allegations must be retained by subject persons for 30 years (in the case of allegations regarding employee health) or 5 years (in the case of all other types of allegations).

§8(d): Health and Safety Studies - Under §8(d), manufacturers (including importers), processors, and distributors of a chemical substance or mixture listed under §8(d) in 40 CFR Part 716 are required to submit to EPA lists and copies of unpublished health and safety studies of those chemicals. A Federal facility is subject to §8(d) to the extent the facility produces, imports, processes, or distributes in commerce a TSCA §8(d)-listed chemical substance or mixture.

§8(e): Notice to Administrator of Substantial Risks - Any person who manufactures (produces or imports), processes, or distributes in commerce a chemical substance or mixture and who obtains information that reasonably supports a conclusion that such substance or mixture presents a substantial risk of injury to human health or the environment shall immediately inform the EPA Administrator about such information unless such person has actual knowledge that the Administrator has already been adequately informed about such information. For the purposes of §8(e) implementation and compliance, the term "person" includes any department, agency, or other instrumentality of the Federal government, including a Federal facility.

§8(f): Definitions - For purposes of this section, the terms "manufacture" and "process" mean manufacture or process for commercial purposes.

§11: Inspections and Subpoenas - EPA may inspect any establishment, facility, or other premises in which chemical substances are manufactured, processed, stored, or held before or after their distribution in commerce.

§12(b): Exports in General - Under TSCA §12(b), exporters of chemicals subject to TSCA §§4, 5, and 6 regulations must notify the EPA, who will notify the government of the receiving company.

§22: National Defense Waiver - EPA can waive any provision of TSCA upon a request from the President on the ground that it is necessary in the interest of national defense.

§26: Administration - Federal departments and agencies are authorized to make their services, personnel, and facilities available to EPA and to furnish and allow access to all such information that EPA reasonably determines is necessary to fulfill TSCA requirements.

§28: State Programs - EPA may issue grants to States for the establishment and operation of State programs to regulate chemical substances that cause unreasonable risks to human health or the environment.

Title II - Asbestos Hazard Emergency Response Act of 1986 (AHERA)

§202(7): Definitions -

Accredited Asbestos Contractor: The term "accredited asbestos contractor" means a person accredited pursuant to the provisions of §206 of this title.

Asbestos: The term "asbestos" means asbestos from varieties of chrysotile (serpentine), crocidolite (riebectie), amosite (cummingtonite-grunerite), anthophyllite, tremloite, or actinolite.

Asbestos-Containing Material: The term "asbestos-containing material" means any material that contains more than 1 percent asbestos by weight.

Friable Asbestos-Containing Material: The term "friable asbestos-containing material" means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building that when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after it becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

Local Educational Agency: These institutions are defined as 1) any local educational agency as defined in §198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. §3381), 2) the owner of any private, nonprofit elementary or secondary school building, and 3) the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. §921 et seq.).

§203: EPA Regulations - EPA must promulgate regulations requiring the implementation of asbestos response actions in school buildings. These regulations cover inspections, response actions, and post-response actions, and require that warning labels be attached to any asbestos-containing materials still in routine maintenance areas of school buildings. Local educational agencies may face civil liability for violating TSCA or its regulations.

§206: Accreditation Requirements for Asbestos Activities in Public and Commercial Buildings - Federal facilities conducting asbestos inspections, removal, or abatement activities must ensure that these activities are performed by AHERA-accredited personnel.

Title III - Indoor Radon Abatement

§309: Study of Radon in Federal Buildings - Each Federal department or agency that owns Federal buildings shall conduct a study to determine the extent of radon contamination in such buildings.

Title IV - Lead Exposure Reduction

§401: Definitions

Lead-Based Paint Hazard: The term "lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that

is deteriorated or present on accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects pursuant to the provisions of this title.

Accessible Surface: The term "accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

Deteriorated Paint: The term "deteriorated paint" means any interior or exterior paint that is peeling, chipping, chalking, or cracking or any paint located on any interior or exterior surface or fixture that is damaged or deteriorated.

Friction Surface: The term "friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

Impact Surface: The term "impact surface" means an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames.

Target Housing: The term "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is under 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

§402(a): Lead-Based Paint Activities Training and Certification: Regulations - Section 402(a) requires the Administrator of EPA to promulgate regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified.

§406(b): Lead Hazard Information Pamphlet: Renovation of Target Housing - Section 406(b) requires the Administrator of EPA to promulgate regulations to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.

§408: Control of Lead-Based Paint Hazards at Federal Facilities - Federal agencies having jurisdiction over any property or facility, or engaged in any activity that may result in a lead-based paint hazard, are subject to all Federal, State, interstate, and local requirements respecting lead-based paint activities and lead-based paint hazards, to the same extent as any nongovernmental entity.

Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing

(40 CFR Part 745 - Subpart F)

Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directed EPA and the Department of Housing and Urban Development to jointly issue regulations requiring disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before 1978. Under this subpart, a seller or lessor of target housing is required to 1) disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards, 2) provide available records and reports, 3) provide the purchaser or lessee with a lead

hazard information pamphlet, 4) give purchasers a 10-day opportunity to conduct a risk assessment or inspection, and 5) attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

c. EPA Enforcement

EPA's enforcement authorities are set forth in TSCA §16. TSCA §16(b) pertains to the assessment of criminal penalties for violations of TSCA or its implementing regulations. The existence of a violation is to be determined without consideration of the particular culpability of a violator; this factor is to be considered only as an adjustment to a gravity-based penalty. Moreover, States, Tribes, and citizens are authorized under TSCA to enforce TSCA requirements as discussed below in Sections d, e, and f. Historically, EPA has not assessed civil penalties against Federal agencies for violations of TSCA, except for violations of the lead-based paint requirements found in §1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 ("Title X"). A violation of §1018 is a prohibited act under §409 of TSCA. This practice is based on the current status of the law and should continue to be the practice absent some change in the law. For more information on TSCA §1018 requirements, see *Issuance of Interim Enforcement Response Policy Real Estate Notification and Disclosure Rule* (Office of Enforcement and Compliance Assurance, Toxic and Pesticide Enforcement Division, January 23, 1998). For a summary of this guidance, see Chapter V.

The PCB regulations include a ban on manufacture, processing, and distribution in commerce of PCBs, as well as requirements for proper use, storage, disposal, recordkeeping, and marking. EPA has several enforcement options available for addressing PCB violations. For minor violations, EPA's Regional offices have the discretion to issue a Notice of Noncompliance (NON). See Chapter V for more information on NONs.

Federal Facility Compliance Agreements

Typically, EPA will negotiate a Federal Facility Compliance Agreement with Federal facilities that are in violation of TSCA non-lead requirements. The compliance agreement contains several provisions including a schedule for achieving compliance, citizen suit provisions regarding the enforceability of the settlement, and dispute resolution.

Criminal Enforcement

Federal employees may be subject to criminal sanctions, in accordance with §16(b) of TSCA, and 45 U.S.C. §2615(b) for knowing or willful violations of TSCA or the PCB rules. Criminal penalties are listed below.

< **§16(b): Penalties: Criminal -** Any person who knowingly or willing violates certain sections of TSCA Subchapters I, II, or IV will be subject, upon conviction, to a fine of not more than $25,000 for each day of violation and/or imprisonment not to exceed 1 year.

Additionally, criminal fines may be imposed under 18 U.S.C. §3571, the Alternative Fines Act.

d. State Enforcement

EPA provides TSCA enforcement cooperative agreement funds to 14 States, through eight Regional offices, to carry out PCB compliance monitoring activities and to make referrals to EPA on potential violations of Federal requirements addressing clear identification and marking of PCBs and proper use and disposal.

e. Tribal Enforcement

TSCA does not specifically address the role of Tribes in enforcing TSCA requirements in legislation. However, EPA has reasoned that it has the discretion to allow for Tribal programs, and therefore has extended the opportunity to Indian Tribes to apply for TSCA grants and programs.

f. Citizen Enforcement

TSCA §20(a) allows citizens to file a civil action (civil suit) against any Federal agency that is alleged to be in violation of TSCA requirements and any rule promulgated under §4 (testing of chemical substances and mixtures), §5 (manufacturing and processing notices), or §6 (regulation of hazardous chemical substances and mixtures) or under TSCA Subchapter II (Asbestos Hazard Emergency Response) or TSCA Subchapter IV (Lead Exposure Reduction). In addition, TSCA §20(a) allows citizens to file a civil action against any Federal agency that is alleged to be in violation of any order issued under §5 or Subchapters II or IV of TSCA. TSCA §20(a) also allows citizens to file civil actions against the EPA Administrator to compel the Administrator to perform any non-discretionary act or duty.

TSCA §20(b) excludes citizens from filing a civil action if EPA has filed and is diligently prosecuting a TSCA violation; however, citizens can intervene in the case. TSCA §20(b) also precludes citizens from filing a suit until notification is given to EPA and the facility alleged to be in violation of TSCA. Additional conditions and requirements pertaining to citizen suits are set forth in TSCA §20(a) through (d).

g. EPA TSCA Regulations

Federal TSCA regulations are set forth in 40 CFR Parts 700 through 799. Selected sections of the TSCA regulatory program are presented in the following box.

EPA TSCA REGULATIONS

40 CFR 702	General Practices and Procedures
40 CFR 704	Reporting and Recordkeeping Requirements
40 CFR 707	Chemical Imports and Exports
40 CFR 710	Inventory Reporting Regulations
40 CFR 712	Chemical Information Rules

EPA TSCA REGULATIONS (continued)

40 CFR 716	Health and Safety Data Reporting
40 CFR 717	Records and Reports of Allegations that Chemical Substances Cause Significant Adverse Reactions to Health or the Environment
40 CFR 720	Premanufacture Notification
40 CFR 721	Significant New Uses of Chemical Substances
40 CFR 723	Premanufacture Notification Exemptions
40 CFR 745	Lead-Based Paint Poisoning Prevention in Certain Residential Structures
40 CFR 747	Metalworking Fluids
40 CFR 749	Water Treatment Chemicals
40 CFR 750	Procedures for Rulemaking under Section 6 of TSCA
40 CFR 761	PCBs Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions
40 CFR 763	Asbestos
40 CFR 766	Polyhalogenated Dioxins/Furans Reporting and Testing Requirements
40 CFR 790	Test Rule Development and Exemption Procedures
40 CFR 791	Data Reimbursement
40 CFR 792	Good Laboratory Practice Standards
40 CFR 799	Identification of Specific Chemical Substance and Mixture Testing Requirements

h. EPA TSCA Policies and Guidance

There are many documents and policies covering various aspects of TSCA. A selected group of policies and publications is provided below and on the next page.

EPA TSCA POLICIES AND GUIDANCE

Asbestos in Buildings: Guidance for Service and Maintenance Personnel, EPA 560-5-85-018 (July 1985)

Chemicals on Reporting Rules (CORR) Database Disk, EPA 745-K-93-011

EPA and HUD Real Estate Notification and Disclosure Rule: Questions and Answers, EPA 747-F-96-001

Guidance Document for 404 of TSCA, **State Administered Lead-Based Paint Programs** (1995)

Guidance for Controlling Asbestos-Containing Materials in Buildings ("Purple Book"), EPA 560-5-85-024 (June 1985)

Guidance on Remedial Actions for Superfund Sites with PCB Contamination, EPA/540/G-90/007, Directive #9355.4-01, PB91-921-206 (August 15, 1990)

EPA TSCA POLICIES AND GUIDANCE (continued)

A Guide on Remedial Actions at Superfund Sites with PCB Contamination, Directive #9355.4-01FS, PB90-274-432 (August 1, 1990)

Guide to the TSCA Section 4 Process (April 1984)

Issuance of Interim Enforcement Response Policy, Real Estate Notification and Disclosure Rule, Office of Enforcement and Compliance Assurance, Toxic and Pesticide Enforcement Division (January 23, 1998)

The Layman's Guide to TSCA, EPA 745-K93-004

Managing Asbestos in Place: A Building Owner's Guide to Operations and Maintenance Programs for Asbestos-Containing Materials ("Green Book"), EPA 745-K-93-013 (July 1996)

Model Standards and Techniques for Control of Radon in New Residential Buildings, EPA 402-R-94-009

New Chemical Review Process, EPA 560-3-86-002 (March 1986)

Notification of Substantial Risk Under Section 8(e), 52 FR 11110 (March 16, 1978)

PCB Disposal Companies Commercially Permitted (June 18, 1996)

PCB Penalty Policy (April 9, 1990)

PCB Q&A Manual (1994)

Protect Your Family From Lead in Your Home, EPA 747-K-94-001 (May 1995)

Summary of General PCB Regulations, EPA 910-S-95-001 (August 1995)

Summary of Regulations Published Under TSCA (updated quarterly)

Toxic Substances Control Act: Chemical Substances Inventory Volumes 1 Through 5 (Set of 5 Volumes), PB94-507131GEI

TSCA Section 8(e) Reporting Guide (June 1991)

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on TSCA requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

FOR MORE INFORMATION (continued)

TSCA Hotline: The TSCA Hotline provides up-to-date technical assistance and information about programs implemented under TSCA, the Asbestos School Hazard Abatement Reauthorization Act, the Residential Lead-Based Paint Hazard Reduction Act, and the Pollution Prevention Act. In addition, the Hotline provides a variety of documents, including a *Federal Register* notices, reports, information brochures, and booklets. The Hotline is a free service available to private citizens, State and local governments, Federal agencies, environmental and public interest groups, and Congressional members and staff. To contact the Hotline, call (202) 554-1404.

National Pesticides Telecommunications Network: The Network is a free service providing information on pesticides and related issues such as management of pesticide poisonings, emergency treatment information, and disposal procedures. To contact the Network, call 1-800-858-7377.

TSCA Non-Confidential Information Center (NCIC): The TSCA NCIC indexes and provides public access to all regulatory material supporting EPA's actions under TSCA, and disseminates current technical and non-technical publications. Materials kept at the Center include background and technical documents pertinent to each stage of rulemaking, guidance documents, and directives. To contact the NCIC, call (202) 260-7099.

National Lead Information Clearinghouse: The Clearinghouse is designed to provide in-depth technical and non-technical information on lead-related issues. The Clearinghouse is targeted for use by health and abatement professionals, academics, public officials, and others dealing with lead-related issues on a professional basis. To contact the Clearinghouse, call 1-800-424-5323. To receive a basic information packet, fact sheet, and a list of State and local contacts, contact the Hotline at 1-800-532-3394.

National Radon Information Hotline: Hotline callers receive a packet of information about radon and a coupon for a low-cost radon test kit. To contact the Hotline, call 1-800-SOS-RADON. For specific answers to technical questions, contact the Radon Helpline at 1-800-55-RADON.

National Technical Information Service (NTIS): NTIS is the official resource for government-sponsored U.S. and worldwide scientific, technical, engineering, and business-related information. NTIS indexes and provides public access to nearly 3 million technical documents. To contact NTIS, call (703) 487-4650 or 1-800-553-6847. The NTIS Home Page is: http://www.ntis.gov

Office of Prevention, Pesticides and Toxic Substances Home Page:
http://www.epa.gov/internet/oppts/

New Chemicals Program Home Page: http://www.epa.gov/opptintr/newchms/index.htm

C. OTHER LAWS

This section provides information on other laws affecting Federal facilities. Included is a discussion of the Base Closure and Realignment Act (BRAC) and a table summarizing the requirements of seven additional laws. These include the Atomic Energy Act (AEA), the Endangered Species Act (ESA), the Energy Policy Act (EPA), the Hazardous Materials Transportation Act (HMTA), the Marine Mammal Protection Act (MMPA), the National Historical Preservation Act (NHPA), and the Noise Control Act (NCA).

1. Defense Base Closure and Realignment Act

The Defense Base Closure and Realignment Acts of 1988 (P.L. 100-526) and 1990 (P.L. 101-510), commonly referred to as BRAC, established a process for the closing and realignment of military installations. Selection of bases for closure occurred in 1988, 1991, 1993, and 1995 (BRAC I, II, III, and IV). BRAC created an independent Defense Base Closure and Realignment Commission to review recommendations of proposed military base closures and realignments from the Secretary of Defense. BRAC directed the Commission to hold public hearings to discuss those recommendations and to present its findings to the President. In accordance with BRAC, the Commission was terminated on December 31, 1995.

Under BRAC, the Department of Defense (DoD) developed eight selection criteria with public comment for the Commission to use when reviewing the list of bases selected to be closed or realigned. The Commission's purpose was to ensure that the proposals submitted by DoD did not deviate substantially from the eight selection criteria. When it identified deviations, the Commission was authorized to add or delete bases from the list. The four primary selection criteria related to military value, which were to be assessed by four teams within the Commission (Army, Navy, Air Force, and Interagency Issues). The remaining four criteria pertained to return on investment, economic impact, community infrastructure, and environmental impact.

Base closures and realignments may trigger compliance with other environmental laws, such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Response Conservation and Recovery Act (RCRA), and the National Environmental Policy Act (NEPA). For more information on each of these statutes, see Sections B.3, B.8, and B.6 of this chapter. When CERCLA, RCRA, and NEPA requirements are applicable to a base closure or realignment, it is critical that DoD closely coordinate the processes of meeting the requirements of these laws to ensure timely disposal and reuse of the property. Potential applicability of these laws to base closure and realignment is discussed below. The Fast-Track Cleanup Program and its relationship to BRAC also are discussed.

a. BRAC's Relationship to Other Laws

Federal Real Property Transfers (CERCLA §120 (h))

CERCLA §120(h) restricts the contract for sale or other transfer (e.g., leases) of Federally-owned property on which any hazardous substance was stored for 1 year or more, known to have been released, or disposed of. All contracts for sale or other transfer must include notice of the type and

quantity of hazardous substance and notice of the time at which storage, release, or disposal of the hazardous substance occurred.

In 1992, Congress passed the Community Environmental Response Facilitation Act (CERFA) in response to the adverse economic conditions that often follow the closing of Federal facilities. Transferring Federal property to the private sector is often a lengthy process because of the concern over possible hazardous substances on the property and the delay in remediating environmental contamination. CERFA facilitates the identification of Federal land and properties offering the greatest opportunity for reuse and redevelopment, expedites necessary remedial and corrective actions, makes the property available for sale, and ensures the continued liability of the Federal government.

CERCLA §120(h) was amended by CERFA, which added three main provisions to §120(h):

< An amendment addressing the content of deeds (§120(h)(3));

< Identification of uncontaminated property (§120(h)(4)); and

< Notification of States regarding certain leases (§120(h)(5)).

The 120(h)(3) covenant can be deferred under certain circumstances. Further information can be found in EPA's guidance (*EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3)*, June 16, 1998). For detailed information or CERCLA §120(h) requirements, see the discussion of CERCLA in Section B.3 of this chapter.

RCRA Corrective Action

At DoD bases that have been identified for closure and that are subject to RCRA corrective action, RCRA provides corrective action authority for the clean up of solid waste and requires regulatory involvement in the identification and cleanup of solid and hazardous waste. In States without authorized corrective action programs, EPA is responsible for the oversight and enforcement of corrective action by the owner/operator of the facility. Additionally, RCRA requires the establishment of management systems for hazardous waste under RCRA Subtitle C, nonhazardous solid waste under RCRA Subtitle D, and underground storage tanks under RCRA Subtitle I. For additional information about RCRA, see Section B.8 of this chapter.

NEPA Requirements

The decision to close or realign military installations is not subject to NEPA review. However, NEPA requirements apply to 1) the process of closing or realigning an installation once the installation has been selected and 2) to the process of relocating military functions. NEPA review is required during the process of real estate disposal and during the implementation of realigning military functions from one installation to another. Under NEPA, DoD must define the environmental impact of the proposed reuse, document any unavoidable adverse effects, and identify

alternatives to the proposed action. For additional information about NEPA, see Section B.6 of this chapter.

The 1990 BRAC limited NEPA review to the "disposal" of property rather than the "closing" of installations as required in the 1988 BRAC. DoD is required under NEPA to study and develop reasonable alternatives to the community reuse plan. Where CERCLA/RCRA and NEPA processes overlap, they must be coordinated so that the draft environmental impact statement, which is required by NEPA, is consistent with the timing of CERFA requirements. DoD is responsible for the environmental analysis for reuse of closing bases, not future owners. Each service has issued specific BRAC/NEPA guidance dealing with the specific issues of base closure and disposal. Each BRAC/NEPA document must discuss encumbrances and easements beyond CERCLA requirements, for example Executive Order (E.O.) 11990, *Protection of Wetlands*. For more information on E.O. 11990, see Section D.8 of this chapter.

b. Fast-Track Cleanup Program

In 1993, President Clinton introduced the five-part Community Reinvestment Program to mitigate economic dislocation and speed economic recovery of communities affected by BRAC decisions through economic and fast-track cleanup initiatives. The Community Reinvestment Program consists of five major elements, one of which is the Fast-Track Cleanup Program. The adjacent box lists the five major elements of the Fast-Track Cleanup Program.

THE FIVE MAJOR ELEMENTS OF FAST-TRACK CLEANUP

- Job-centered property disposal that puts local economic redevelopment first;
- Fast-track cleanup that removes needless delays, while protecting human health and the environment;
- Transition coordinators at every base slated for closure;
- Easy access to transition and redevelopment help for workers and communities; and
- Larger economic development planning grants to base closure communities.

The primary goal of the Fast-Track Cleanup Program is to expeditiously make property available for transfer to the community, with the focus of the program on integrating the community's reuse needs into the cleanup to allow for safe reuse to occur.

The Fast-Track Cleanup Program is not a substitute for, nor does it supplant, environmental cleanup requirements established by Federal and State environmental laws and regulations. Rather, the focus is on expediting cleanup to make property available for reuse and transfer to affected communities, while still protecting human health and the environment. To that end, the Fast-Track Cleanup Program, in addition to following those established requirements, relies on a variety of other tools—guides, fact sheets, brochures, handbooks, and workshops—to share lessons learned and provide ways to expedite cleanup and make property available for reuse and transfer. The principles of the Fast-Track Cleanup Program are listed on the following page.

PRINCIPLES OF THE FAST-TRACK CLEANUP PROGRAM

- Protecting human health and the environment;
- Making property available for reuse and transfer as soon as possible; and
- Providing effective community involvement.

Teamwork and partnerships are key to the Fast-Track Cleanup Program. Early, consistent, and frequent dialogue and coordination are essential to the success of the program. Outlined in the following text boxes are the roles and responsibilities of some key players in the program, including the BRAC Environmental Coordinator (BEC), Restoration Advisory Boards (RAB), Base Transition Coordinator (BTC), and Local Redevelopment Authority (LRA). A description of the BEC and RABs is provided in the adjacent box.

The **BRAC Environmental Coordinator (BEC)** is appointed by the DoD component responsible for the installation and is given the authority, responsibility, and accountability for environmental programs related to the transfer of installations' real property. The responsibilities of the BEC include: forming the BCT, participating as a member of the Restoration Advisory Board, implementing all environmental cleanup programs related to closure in accordance with the BRAC Cleanup Plan, and acting as a liaison with appropriate installation and headquarters commanders on closure-related environmental compliance matters.

Restoration Advisory Boards (RABs) have been established at installations to provide a forum for discussion and exchange of cleanup information between government agencies and the public. The RAB is comprised of representatives from the DoD component, EPA, State (generally the members of the BCT), and the local community. The RAB is jointly chaired by an installation representative and a member of the local community. Through the RAB, stakeholders may review progress and provide input to the decisionmaking process. A variety of vehicles are used by the RAB to disseminate information: public meetings, bulletins, and central repositories.

There are three major elements for implementing the Fast-Track Program: 1) establish cleanup teams, 2) make property available for reuse and transfer, and 3) indemnification. Each of these is described below.

Establish Cleanup Teams

To deal with the complex environmental problems at Fast-Track Cleanup locations, BRAC Cleanup Teams (BCTs) were created. BCTs are located at all active Fast-Track Cleanup locations and work to hasten cleanup efforts and integrate them with potential reuse options. The BCT consists of representatives from DoD, the State regulatory agency, and EPA. The composition of the BCT may vary depending on the requirements at the installation. The BCT has the responsibility to emphasize cleanup actions that facilitate reuse and redevelopment of the property. The DoD representative to the BCT is the BRAC Environmental Coordinator. The BCT is the primary forum in which issues affecting the execution of cleanup to facilitate reuse will be addressed. The BCT is supported by a project team that can include other installation and government agency staff and contractors. The BCT coordinates closely with the BTC and the LRA in developing and implementing a cleanup

program that facilitates redevelopment. The members of the BCT work together to seek innovative approaches to expedite the cleanup at the installation by:

< Using innovative cleanup methods;

< Using interim cleanup actions; and

< Identifying clean parcels and making them immediately available for transfer.

The BCT and LRA are described in the adjacent box. The BCT is responsible for conducting a "bottom-up" review of existing environ-mental programs after the installation has been placed on a BRAC list. The purpose of the review is to identify opportunities for acceleration of cleanup and property transfer. This has been accomplished for all four BRAC laws.

The **Base Transition Coordinator (BTC)** is appointed by DoD and works as an ombudsman for the community. The BTC serves as the local liaison between the BCT and the Local Redevelopment Authority to help facilitate redevelopment of the property and the creation of new jobs for the community. The BTC is responsible for ensuring that property disposal and reuse issues are closely coordinated with restoration initiatives, thereby enabling property to be transferred as efficiently and effectively as possible.

The **Local Redevelopment Authority (LRA)** is usually created by elected local or State officials and recognized by DoD. The LRA is responsible for representing the community's interests and developing or implementing the reuse plan of the property. The LRA serves as the community's point-of-contact for all matters related to reuse, acting as an interface between the community and the installation (through the BTC).

The results of the bottom-up review are documented in a BRAC Cleanup Plan (BCP), which sets priorities for the requirements, schedules, and costs of environmental programs. The BCP is a key management tool for planning and carrying out the environmental restoration, reuse, and transfer of property and is intended to be the following:

< A concise living document owned by the BCT and updated as necessary; and

< A document that contains elements to immediately support the integration of environmental restoration and reuse activities and requirements.

Make Property Available for Reuse and Transfer

< *Accelerate National Environmental Policy Act (NEPA) Requirements*: DoD guidance and the base closure law require the completion of NEPA analysis and documentation within 1 year after the reuse plan is completed by the LRA. The redevelopment plan forms the basis for the proposed action and alternative analysis for the NEPA process.

< *Make Clean Parcels Available*: DoD has improved the process of identifying uncontaminated or clean parcels that are available for transfer by providing for the earlier involvement of the appropriate regulatory agencies and earlier initiation of environmental baseline surveys to

identify clean parcels. The review process to identify clean parcels has been completed for all four BRAC laws.

< *Determine Suitability of Property for Reuse*: A Finding of Suitability to Transfer (FOST) process has been established to identify and prepare property for transfer by deed. Such transfers are usually undertaken at property where environmental response is not needed nor has been taken. However, under certain conditions, new authority now permits earlier transfer. The FOST process also looks at the compatibility of an anticipated reuse with completed restoration activities and identifies restrictions necessary to protect human health and the environment.

A Finding of Suitability to Lease (FOSL) process also has been established for leasing of property that cannot be transferred by deed because environmental restoration activities are still ongoing. The FOSL process also looks at the compatibility of a proposed reuse with ongoing restoration activities and identifies restrictions necessary to protect human health and the environment and prevent interference with the cleanup.

Indemnification

DoD will indemnify lessees or owners of transferred property for claims arising from contamination resulting from past DoD operations. This allows DoD to more readily lease or transfer real property and promote reuse.

c. BRAC Policies and Guidance

Selected policy and guidance documents are listed in the box below.

BRAC POLICIES AND GUIDANCE

Asbestos, Lead Paint, and Radon Policies at BRAC Properties, DoD (October 31, 1994)

Base Reuse Manual: Guidance for Implementing the Base Closure Community Assistance Act of 1993 and the Base Closure Community Redevelopment and Homelessness Assistance Act of 1994, DoD 4165.66M (December 1997)

Defense Base Closure and Realignment Commission Report to the President (1991, 1993, 1995)

EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3) (June 16, 1998)

EPA Review of DoD Base Closure Environmental Impact Statements Reference Guide (September 30, 1997)

EPA's Guidance for Implementing the Fast-Track Cleanup Program at Closing or Realigning Military Bases (February 16, 1997)

BRAC POLICIES AND GUIDANCE (continued)

Fast-Track Cleanup at Closing Installations, DoD (May 18, 1996)

A Guide to Assessing Reuse and Remedy Alternatives at Closing Military Installations, DoD (February 1996)

Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Defense: Procedures to Determine Environmental Suitability for Leasing Property Available as a Result of a Base Closure or Realignment (May 4, 1994)

Memorandum of Understanding Between the U.S. Environmental Protection Agency and the U.S. Department of Defense: Support for Implementation of Fast-Track Cleanup at Closing Department of Defense (DoD) Installations (March 25, 1994)

Military Base Closures: Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA, Section 120(h)(4), EPA, OSWER Directive 93 45.0-09 (April 19, 1994)

Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 120(h)(4), EPA (March 27, 1997)

Overview of the Fast-Track Cleanup Program (Spring 1997)

Restoration Advisory Board (RAB) Implementation Guidelines, DoD/EPA (September 27, 1994)

Revised Model Comfort Letter Clarifying NPL Listing, Uncontaminated Parcel Determinations, and CERCLA Liability Involving Transfers of Federally-owned Property, EPA (January 19, 1996)

FOR MORE INFORMATION

EPA Regions: Federal facility personnel should contact the EPA Regional Federal Facility Coordinator (FFC) for more information on BRAC requirements. Appendix A provides the names and phone numbers for each EPA FFC. The roles and responsibilities of FFCs are discussed in Chapter VII.

Office of the Assistant Deputy Under Secretary of Defense:
Attn.: Fast-Track Cleanup
3400 Defense Pentagon
Washington, D.C. 20301-3400

Federal Facilities Restoration and Reuse Office Home Page:
http:www.epa.gov/swerffrr/

Department of Defense BRAC Program Home Page:
http://www.dtic.mil/envirodod/brac/

2. Summary of Other Selected Environmental Laws

Table II-1 below provides a synopsis of additional Federal environmental laws with which Federal facilities must comply.

Table II-1: Summaries of Other Selected Environmental Laws

ENVIRONMENTAL LAW	SUMMARY
Atomic Energy Act (AEA) of 1954	AEA provides the framework to regulate all phases of nuclear energy production and the production of radioactive materials. AEA applies to all types of production except for accelerator-produced radiation (e.g., that produced by supercolliders). AEA is implemented by the Nuclear Regulatory Commission, the Department of Energy, and EPA.
Endangered Species Act (ESA) of 1973, amended in 1979, 1982, and 1988	ESA provides a framework for the protection of endangered and threatened species. Federal agencies may not jeopardize the existence of listed species, which includes ensuring that actions they authorize, fund, or carry out do not adversely modify designated critical habitats. Under ESA, all Federal departments and agencies also must utilize their authorities, as appropriate, to promote the recovery of listed species. In addition, ESA prohibits all persons, including Federal agencies, from harming or killing ("taking") individuals of a listed animal species without authorization. While Federal agencies must consult with the U.S. Fish and Wildlife Service or National Marine Fisheries Service when their activities may affect listed species, projects cannot be stopped unilaterally by the services; however, for any anticipated "take" to be authorized, applicable measures to minimize the take that are developed in the consultation must be followed.
Energy Policy Act (EPA) of 1992	The Energy Policy Act includes a wide variety of energy mandates that are intended to enhance U.S. energy security, reduce energy-related environmental effects, and encourage long-term economic growth. Major provisions establish important new energy efficiency standards, allow greater competition in electricity generation, establish new licensing procedures for nuclear plants and waste repositories, and provide tax incentives for domestic energy production and conservation.
Hazardous Materials Transportation Act (HMTA) of 1974, amended in 1994	HMTA regulates the labeling, packaging, emergency response, and spill reporting provisions for hazardous materials in transit and stipulates that shippers must certify that they are in compliance with Department of Transportation regulations. When EPA-regulated hazardous wastes are shipped, they must be accompanied by a manifest.

Table II-1: Summaries of Other Selected Environmental Laws (continued)

ENVIRONMENTAL LAW	SUMMARY
Marine Mammal Protection Act (MMPA) of 1972	MMPA generally prohibits the "taking" and import of marine mammals and marine products by people and vessels under U.S. jurisdiction, unless a specific permit for taking is granted by the Federal government. Unless for research purposes, permits will not be granted for species designated as "depleted." Coastal indigenous Alaskans are exempted from the requirements of MMPA. The Departments of Commerce and Interior are responsible for administering MMPA.
National Historical Preservation Act (NHPA) of 1966, amended 1992	NHPA preserves for public use historic and cultural sites of national significance by establishing an advisory council to help the government administer NHPA, the National Register of Historic places, and the National Trust for Historic Preservation. The National Trust has authority to receive and administer donated funds and historic properties. Federal authority can be delegated to State Historic Preservation Offices (SHPOs). Agencies are required to appoint an agency preservation officer, preserve all historic properties they own or control, notify the Department of the Interior (DOI) of projects that will cause the loss of significant historic materials, and request DOI preservation assistance.
Noise Control Act (NCA) of 1972, amended in 1978	NCA requires EPA to establish noise emissions standards for products that are major noise sources (e.g., construction, transportation, motors, engines, and electrical or electronic equipment). Stationary sources on Federal facilities are subject to Federal, State, and local noise ordinances, unless an exception is granted by the President. NCA was amended by the Quiet Communities Act of 1978.

D. SUMMARIES OF EXECUTIVE ORDERS

This section summarizes key executive orders (E.O.s) that contain environmental requirements applicable to Federal facilities. Detailed information is provided for 7 E.O.s and Table II-2 provides summaries of 13 additional E.O.s.

1. Executive Order 12088

EXECUTIVE ORDER 12088 AT A GLANCE

Title:	Federal Compliance With Pollution Control Standards
Issued:	October 13, 1978
Amended:	January 23, 1987, by Executive Order (E.O.) 12580, Superfund Implementation
Summary:	E.O. 12088 was established to ensure Federal agency compliance with Federal, State, and local pollution control requirements. E.O. 12088 directs EPA to establish guidelines to assist Federal agencies when developing environmental plans.

Executive Order (E.O.) 12088 requires all Federal agencies to be in compliance with environmental laws and fully cooperate with EPA, State, interstate, and local agencies to prevent, control, and abate environmental pollution. The head of each Federal agency must ensure that the prevention, control, and abatement of environmental pollution is incorporated into the management of agency activities and facilities. E.O. 12088 also requires Federal agencies to develop and maintain plans for controlling environmental pollution. These plans are discussed in detail in Section H of Chapter IV.

E.O. 12088 also establishes an administrative process to resolve compliance problems when the EPA Administrator is unable to settle a dispute. Exemptions to E.O. 12088 requirements may be granted in the "interest of national security or in the paramount interest of the United States." E.O. 12088 assigns specific responsibilities to Federal agencies, which are discussed below. The full text of E.O. 12088 is presented in Appendix C.

Applicability of Pollution Control Standards

Section 1-1 of E.O. 12088 requires that each Federal agency ensure that all necessary actions are taken for meeting pollution control responsibilities with respect to Federal facilities and activities under the control of the agency. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

Agency Coordination

Section 1-2 of E.O. 12088 requires each Federal agency to cooperate with EPA and with State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution. Section 1-2 also requires Federal agencies to consult with EPA, and with State, interstate, and local

agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

Technical Advice and Oversight

Section 1-3 of E.O. 12088 requires EPA to provide technical advice and assistance to Federal agencies to ensure that Federal agency pollution control actions are cost-effective, timely, and in compliance with applicable pollution control standards. In addition, the EPA Administrator is required to conduct reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

Pollution Control Plan

Section 1-4 of E.O. 12088 requires that each Federal agency submit pollution control plans annually that include any necessary improvements in the design, construction, management, operation, and maintenance of Federal facilities and activities, including cost estimates to EPA and the Office of Management and Budget (OMB). Additionally, each Federal agency must ensure that the plan provides for compliance with all applicable pollution control standards and that the plan is submitted in accordance with any other instructions that the Director of OMB may issue. This process, known as the Federal Agency Environmental Management Program Planning (FEDPLAN) process, is described in more detail in Chapter IV.

Funding

Section 1-5 of E.O. 12088 requires the head of each Federal agency to ensure that sufficient funds for environmental compliance are requested in the agency's budget. Additionally, the head of each Federal agency is required to ensure that funds appropriated and apportioned for pollution control responsibilities are not used for any other purpose unless permitted by law and specifically approved by OMB.

Compliance with Pollution Controls/Dispute Resolution

Section 1-6 of E.O. 12088 specifies that whenever the Administrator or the appropriate State, interstate, or local agency notifies a Federal agency that it is in violation of an applicable pollution control standard, the Federal agency is required to promptly consult with the notifying agency and to provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. Additionally, the Order states that the EPA Administrator shall make every effort to resolve conflicts regarding such violation between Federal agencies and, on the request of any party, such conflicts between a Federal agency and a State, interstate, or a local agency. If the EPA Administrator is unable to resolve the conflict, E.O. 12088 states that the EPA Administrator shall request the Director of OMB to resolve the conflict. E.O. 12088 allows the EPA Administrator to refer to OMB Federal agency disputes that involve funding or other pollution control requirements. The administrative dispute resolution procedures set forth in E.O. 12088 are in addition to, and not in lieu of, other administrative and enforcement procedures designed to achieve expeditious compliance. For more information on dispute resolution, see Chapter V, Section C.5, and E.O. 12146 in Section D.2 of this chapter.

Federal Facilities Overseas

Section 1-8 of E.O. 12088 requires that Federal agencies outside the United States comply with all applicable environmental laws of the host country or jurisdiction. This includes the construction and operation of facilities. The requirement that Federal agencies develop and submit environmental plans to EPA applies equally to an agency's domestic and overseas activities. For more information pertaining to the requirements of facilities located overseas, see Chapter I.

2. Executive Order 12146

EXECUTIVE ORDER 12146 AT A GLANCE

Title: Management of Federal Legal Resources

Issued: July 18, 1979

Summary: Executive Order (E.O.) 12146 establishes a Federal Legal Council consisting of the Attorney General and 15 agencies to encourage coordination and communication among Federal legal offices. E.O. 12146 also creates a process to mediate legal disputes between agencies, creates a litigation notice system for civil litigation affecting the Federal government, and encourages agencies to release legal opinions that are statements or interpretation of agency policy, unless this would cause demonstrable harm.

E.O. 12146 established the Federal Legal Council to promote communication and coordination among Federal legal offices. Additional Council responsibilities include improving management of Federal lawyers, associated support personnel, and information systems; improving the training provided to Federal lawyers; and developing recommendations for legislation and other actions to increase the efficient and effective operation and management of Federal legal resources. In addition, E.O. 12146 establishes requirements for the Attorney General and Federal agencies. These requirements are summarized below.

Litigation Notice System

The Attorney General is required to establish and maintain a litigation notice system that provides timely information about all civil litigation pending in the courts in which the Federal government is a party or has a significant interest. Additionally, the Attorney General must issue rules to govern the operation of the notice system.

Resolution of Interagency Legal Disputes

Whenever two or more Executive agencies are unable to resolve a legal dispute between them, including the question of which jurisdiction to administer a particular program or to regulate a particular activity, each agency is encouraged to submit the dispute to the Attorney General. Also, whenever two or more Executive agencies whose heads serve at the pleasure of the President are unable to resolve such a legal dispute, the agencies must submit the dispute to the Attorney General prior to proceeding in any court, except where there is specific statutory vesting of responsibility for resolution elsewhere.

EXAMPLE OF EXECUTIVE ORDER 12146 DISPUTE RESOLUTION PROCESS

An example of the dispute resolution process is illustrated in the July 16, 1997, Department of Justice (DOJ) Office of Legal Counsel (OLC) decision, issued in accordance with Executive Order 12146, resolving a legal dispute between the Department of Defense and EPA. This dispute originated from the two agencies' differing interpretations of certain provisions in the Clean Air Act (CAA), specifically whether Federal facilities would be subject to field citations under CAA §113(d). DOJ ruled that EPA has penalty authority not only under §113(d), but also under §205(c) and §211(d)(1), against Federal agencies for violations of CAA using the clear express statement standard. The OLC also affirmatively ruled that EPA also has penalty authority for all stationary source and mobile source requirements, not merely field citation authority. The DOJ decision is provided in full text in Appendix B.

The decision is significant because DOJ determined that EPA has penalty authority against Federal agencies under any law provided the statute clearly states it, regardless of whether the waiver of sovereign immunity would be considered broad enough to subject the Federal agencies to penalties assessed by entities outside the Federal government. EPA now has penalty authority for Federal facilities under several environmental laws including CAA, the Safe Drinking Water Act, the Resource Conservation and Recovery Act (underground storage tanks and hazardous waste), and the lead requirements Congress added to the Toxic Substances Control Act in 1992.

Access to Legal Opinions

E.O. 12146 encourages all Federal agencies to make available for public inspection and copying other opinions of their legal officers that are statements of policy or interpretation that have been adopted by the agency, unless the agency determines that disclosures would result in demonstrable harm. In addition, all agencies are encouraged to make available, on request, other legal opinions when the agency determines that disclosure would not be harmful.

Automated Legal Research and Information Systems

The Attorney General, in coordination with the Secretary of Defense and other agency heads, shall provide for a computerized legal research system that will be available to all Federal law offices on a reimbursable basis. Also, the Federal Legal Council shall provide leadership for all Federal legal offices in establishing appropriate word processing and management information systems.

Responsibilities of the Agencies

E.O. 12146 requires Federal agencies, to the extent permitted by law, to furnish the Federal Legal Council and the Attorney General with reports, information, and assistance, as requested, to carry out the provisions of this Order. Each agency must cooperate with the Federal Legal Council and Attorney General in the performance and functions provided under E.O. 12146.

3. Executive Order 12580

EXECUTIVE ORDER 12580 AT A GLANCE

Title: Superfund Implementation

Issued: January 23, 1987

Amended: August 28, 1996, by Executive Order (E.O.) 13016, Amendment to E.O. 12580

Summary: E.O. 12580 delegates the President's authorities under CERCLA to the heads of various Federal agencies. The E.O. delegates most response authorities to EPA and the Coast Guard. However, authority to address releases at Federal facilities is generally delegated to the head of the Federal agency with jurisdiction over the Federal facility. In addition, E.O. 12580 requires Federal agencies to assume certain duties, such as participating on national/regional response teams. E.O. 12580 was amended by E.O. 13016, which delegated certain CERCLA abatement and settlement authorities to the Secretaries of Commerce, Interior, Agriculture, Defense, and Energy, to be exercised in concurrence with EPA.

Executive Order (E.O.) 12580 and E.O. 13016 are the implementing E.O.s for CERCLA. As such, the E.O.s delegate certain CERCLA authorities and responsibilities to EPA and other Federal agencies. These authorities and responsibilities are summarized below. E.O. 12580 and E.O. 13016 are printed in their entirety in Appendix C.

National Contingency Plan

Section 1 of E.O. 12580 requires the National Contingency Plan (NCP) to provide for national and regional response teams (RRTs) to plan and coordinate cleanup activities. These teams are chaired by representatives from EPA and the Coast Guard, and are composed of members from the Federal Emergency Management Agency, the Nuclear Regulatory Commission, and the Departments of State, Labor, Health and Human Services, Commerce, Transportation, Energy, Defense, Justice, Interior, and Agriculture. RRTs also may include representatives from State, Tribal, and local governments.

General CERCLA Authorities

E.O. 12580 delegates several CERCLA authorities to any Federal agency if there is a release on or solely from a vessel or facility under the agency's jurisdiction, control, or custody. Under these circumstances, §§2, 3, and 6 of E.O. 12580 delegate to the head of the Federal agency a number of specific powers and duties, including the authority to:

< Gather information necessary to determine the need for a response or for choosing a response action;

< Issue compliance orders to gather necessary information (with concurrence from the U.S. Attorney General);

< Award response action contracts (RACs) and indemnify RAC contractors; and

< Acquire any interest in real property necessary to conduct a response action.

In exercising these powers, Federal agencies are given the responsibility to establish an administrative record and to provide an opportunity for public comment before the adoption of a remedial action plan.

Response and Related Authorities/Enforcement

Sections 2 and 4 of E.O. 12580 delegate authorities to Federal agencies to respond to hazardous substance releases in particular situations, including the authority to:

< Initiate studies and investigations of releases on or from a facility under the jurisdiction, custody, or control of the Federal agency;

< Select remedial actions (at non-National Priorities List (NPL) Federal facilities); and

< Conduct removal or remedial actions.

With regard to non-NPL releases, §4(b)(1) provides authority to Federal agencies (with concurrence of the Attorney General) to enter into settlements with potentially responsible parties (PRPs) and to assess administrative penalties for violating a settlement. The one exception to this delegation of authority is that Federal agencies cannot enter into mixed funding settlements under CERCLA §122(b)(1) unless the Federal agency is the PRP seeking mixed funding from EPA.

E.O. 13016 delegates to the Secretaries of Interior, Agriculture, Commerce, Defense, and Energy the authority to implement CERCLA §106(a) pertaining to abatement and CERCLA §122 pertaining to settlements (except §122(b)(1) regarding mixed funding). Under E.O. 13016, these authorities can be exercised only with the concurrence of the Coast Guard with respect to 1) any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting natural resources under its trusteeship; or 2) a vessel or facility subject to its custody, jurisdiction, or control. Furthermore, such authority can be exercised only with the concurrence of the EPA Administrator with respect to any release or threatened release affecting 1) natural resources under their trusteeship, or 2) a vessel or facility in its custody, jurisdiction, or control.

Under E.O. 13016, §106(a) and §122 (except §122(b)(1)), authority may not be exercised at any vessel or facility at which the Coast Guard or the EPA Administrator is the lead Federal agency for the conduct or oversight of a response action.

Management of Hazardous Substance Superfund and Claims

Section 9(d) of E.O. 12580 authorizes Federal agencies that are provided Superfund monies to designate Federal officials who may obligate the funds. Section 9(i) stipulates that Superfund monies may be used, at the discretion of EPA and the Coast Guard, to pay for removal actions at Federal facilities. However, these Superfund monies must be reimbursed by the Federal agency.

Federal Facilities

Section 10(a) of E.O. 12580 gives Federal agencies the opportunity to present their views to the Administrator after using the dispute resolution procedures of E.O. 12088 (or any other mutually acceptable processes) prior to the selection of a remedial action by the EPA Administrator under an interagency agreement. This provision also designates the Director of the Office of Management and Budget to facilitate resolution of any issues. Section 10(b) adds new language to E.O. 12088 stating that nothing in that Order shall create a right or benefit enforceable by law.

General Provisions

Section 11(b)(2) of E.O. 12580 requires each Federal agency head to consider the availability of qualified minority contractors. Section 11(e) grants Federal agencies the authority to issue such regulations as may be necessary to carry out the functions delegated to them by E.O. 12580.

4. Executive Order 12856

EXECUTIVE ORDER 12856 AT A GLANCE

Title: Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements

Issued: August 3, 1993

Summary: E.O. 12856 requires Federal compliance with the Emergency Planning and Community Right-to-Know Act of 1986 and the Pollution Prevention Act of 1990, including implementing regulations. This Order also mandates that Federal agencies practice pollution prevention strategies that promote source reduction.

Under Executive Order (E.O.) 12856, Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). The intent of E.O. 12856 is to ensure greater public access to information about hazardous and toxic chemicals in communities. E.O. 12856 mandates that Federal agencies develop pollution prevention plans for reducing or eliminating the use of hazardous and toxic chemicals. Key provisions of E.O. 12856 are discussed below. The full text of E.O. 12856 is presented in Appendix C. For more information on EPCRA, see Section B.4 of this chapter. More information on PPA is presented in Chapter III.

Under E.O. 12856, each Federal agency must:

< Develop a written pollution prevention strategy, including a policy statement identifying an individual responsible for coordinating the agency's efforts in this area and committing the agency to pollution prevention, using source reduction as the primary means to achieve and maintain compliance with Federal, State, and local environmental requirements. This strategy is to be provided to EPA.

< Establish voluntary goals to reduce total releases and off-site transfers of toxic substances by 50 percent by December 31, 1999. To the maximum extent possible, such reductions should be achieved by implementation of source reduction practices.

< Develop a plan and goals for eliminating or reducing the unnecessary acquisition, manufacturing, processing, and use of products containing extremely hazardous substances or toxic chemicals. Priorities for all of the obligations will be developed by Federal agencies in coordination with EPA to reflect an assessment of relative risk.

< Review its own standardized documents, such as specifications and standards, and identify opportunities to reduce or eliminate the use of extremely hazardous substances and toxic chemicals consistent with safety and reliability requirements of its agency mission. This requirement of review and revision is incumbent upon the Department of Defense and the General Services Administration, and other agencies as appropriate. Federal agencies will make all appropriate revisions to these specifications and standards by 1999.

< Attempt to develop and test innovative pollution prevention technologies at its facilities to encourage the development of strong markets for such technologies. In addition, partnerships are encouraged between industry, Federal agencies, government laboratories, academia, and others to assess and deploy innovative environmental technologies.

< Comply with the provisions, including Toxic Release Inventory (TRI) reporting requirements, set forth in §313 of EPCRA, §6607 of PPA, and all implementing regulations, and ensure that each of its facilities subject to TRI regulations develop a pollution prevention plan that sets forth the facility's contribution to its agency's goals to reduce total releases and off-site transfers of toxic substances by December 31, 1999.

< Comply with emergency planning and notification requirements under EPCRA §§301 through 312, providing all information necessary for the applicable Local Emergency Planning Committee to prepare or revise local emergency response plans.

< Submit Material Safety Data Sheet information, as required under §311 of EPCRA, for any facilities required to maintain such information under any provisions of law or executive order.

< Submit an annual report to EPA, beginning October 1, 1995, on its progress toward meeting all aspects of E.O. 12856. This reporting requirement will expire after the report due on October 1, 2001. EPA must annually report to the President on the government-wide implementation of the TRI aspect of E.O. 12856.

< Ensure that sufficient funds for environmental compliance are requested through the Federal Agency Pollution Abatement and Planning process and agency budget requests.

< Include in all future contracts with its relevant contractor a requirement for the contractor to provide the agency with all information necessary to comply with this Order.

< Return to compliance as promptly as is practicable in the event that EPA notifies a Federal agency that it is not in compliance with E.O. 12856.

< Make all strategies, plans, and reports available to the public to the extent permitted by law, unless such documentation is withheld for national security reasons.

EPA has specific responsibilities regarding pollution prevention at Federal facilities. These include:

< Establishing an interagency task force to assist agencies in implementing E.O. 12856.

< Providing advice and technical assistance to agencies.

< Establishing the "Federal Government Environmental Challenge Program" to recognize outstanding environmental management performance in Federal agencies and facilities, including a means of recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention. Chapter III provides information on this requirement.

< Monitoring compliance with pollution prevention requirements by conducting inspections and review, as necessary.

E.O. 12856 does not change government-owned/contractor-operated or government corporation facility responsibilities under EPCRA and PPA. Federal facilities outside the customs territory of the United States, such as U.S. diplomatic and consular missions abroad, are not subject to E.O. 12856. Exceptions from compliance with this Order with respect to particular Federal facilities may be granted by the President in the interest of national security.

A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements;* E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*; and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.

5. Executive Order 12898

EXECUTIVE ORDER 12898 AT A GLANCE

Title:	Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
Issued:	February 11, 1994
Summary:	Executive Order 12898 is designed to focus the attention of Federal agencies on the human health and environmental conditions in minority communities and low-income communities with the goal of achieving environmental justice.

Executive Order (E.O.) 12898 requires Federal agencies to achieve environmental justice by identifying and addressing, as appropriate, any disproportionately high and adverse human health or environmental impacts that their programs, policies, and activities may have on minority populations and low-income populations. To achieve this objective, the Order and the President's accompanying memorandum establish the following goals:

< Promoting enforcement of environmental and health regulations in minority populations and low-income populations;

< Ensuring that agency actions substantially affecting human health or the environment do not have discriminatory effects based on race, color, or national origin;

< Increasing public participation by providing concise, understandable, and readily accessible documents and, where appropriate, translating documents and public hearing notices into other languages;

< Improving research, data collection, and analysis on human and environmental health issues in minority populations and low-income populations;

< Seeking to protect populations that consume fish or wildlife as subsistence; and

< Analyzing the environmental effects (including human health, economic, and social effects) of Federal actions on minority communities and low-income communities when such analysis is required by the National Environmental Policy Act or when mitigation measures, environmental assessments, or records of decision are developed.

Agencies are responsible for developing and implementing their own agency-wide environmental justice strategy that describes the steps agencies will take to identify and address disproportionately high and adverse human health or environmental effects of their actions on minority populations or low-income populations. An agency's environmental justice strategy should list programs, policies, planning, and public participation processes, enforcement, and/or rulemakings that should be revised to incorporate environmental justice into agency management procedures.

To assist in developing agencies' environmental justice strategies, E.O. 12898 establishes an interagency working group chaired by EPA. Among other things, the working group was created to 1) provide guidance on identifying environmental justice issues, 2) stimulate cooperation among agencies, 3) assist in coordinating research and data collection, 4) examine existing data and studies on environmental justice, and 5) maintain a structure and schedule for agencies implementing their environmental justice strategy. Environmental justice is discussed further in Chapter III, Section C.

6. Executive Order 12902

EXECUTIVE ORDER 12902 AT A GLANCE

Title: Energy Efficiency and Water Conservation at Federal Facilities

Issued: March 8, 1994

Summary: Executive Order (E.O.) 12902 establishes agency goals and reporting requirements for increasing energy and water efficiency at Federal facilities. All Federal facilities (including government-owned/contractor-operated facilities) must adhere to these goals and requirements. Waivers may be obtained from the Department of Energy if E.O. 12902 requirements are inconsistent with the agency's mission.

Under E.O. 12902, the Department of Energy (DOE) is required to implement the energy and water efficiency goals and requirements through the Federal Energy Management Program. Specifically, E.O. 12902 requires that the Interagency Energy Policy Committee ("656 Committee") and the Interagency Energy Management Task Force serve as forums to coordinate issues involved in implementing energy efficiency, water conservation, and solar and other renewable energy measures in the Federal sector.

The energy and water efficiency goals and reporting requirements established by E.O. 12902 include:

< *Energy Consumption Reduction Goals*: Each agency must develop and implement a program to reduce energy consumption by 30 percent by the year 2005.

< *Energy and Water Surveys and Audits of Federal Facilities*: Each agency that is responsible for managing Federal facilities must conduct a prioritization survey, within 18 months of the date of E.O. 12902, on each facility the agency manages. The surveys will be used to establish priorities for conducting comprehensive facility audits and implement a 10-year plan to conduct or obtain comprehensive facility audits.

< *Implementation of Energy Efficiency and Water Conservation Projects*: Within 1 year of the date of E.O. 12902, agencies must identify high-priority facilities to audit and must complete the first 10 percent of the required comprehensive facility audits. Within 180 days of the Order, agencies must implement cost-effective recommendations from comprehensive facility audits performed within the past 3 years for installation of energy efficiency, water conservation, and renewable energy technologies.

< *Minimization of Petroleum-Based Fuel Use in Federal Buildings and Facilities*: All agencies must develop and implement programs to reduce the use of petroleum in their buildings and facilities and switch to a less polluting and non-petroleum-based energy source, such as natural gas or solar and other renewable energy sources.

< *Showcase Facilities*: When an agency constructs at least five buildings in 1 year, it must designate at least one building to be a showcase highlighting advanced technologies and practices for energy efficiency, water conservation, or use of solar and other renewable energy. In addition, each agency must designate one of its major buildings to become a showcase to highlight energy or water efficiency and also must attempt to incorporate co-generation, solar and other renewable energy technologies, and indoor air quality improvements.

Additional goals and requirements set forth in E.O. 12902 address solar and other renewable energy sources, new facility construction, new leases for existing facilities, annual reporting requirements, and use of innovative financing and contractual mechanisms.

E.O. 12902 requires DOE, in coordination with other agencies such as EPA, the General Service Administration, and the Department of Defense, to provide technical assistance, incentives, and awareness programs to help agencies achieve the goals and requirements of the Order. Moreover, agencies are encouraged to seek technical assistance from DOE to develop and implement solar and other renewable energy projects.

7. Executive Order 12969

EXECUTIVE ORDER 12969 AT A GLANCE

Title:	Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting
Issued:	August 8, 1995
Summary:	Executive Order 12969 requires Federal agencies, to the greatest extent practicable, to contract for supplies and services with companies that report publicly on the toxic chemicals they release into the environment.

Executive Order (E.O.) 12969 requires Federal agencies to include in certain competitive contract solicitations and resultant contracts a certification by the contractor that their covered facilities to be used in the performance of the contract report publicly on the toxic chemicals they release into the environment. Specifically, E.O. 12969 requires that Federal agency competitive contract solicitations direct contractors to include in their responses to solicitations a certification that the contractor will (if awarded the contract) ensure that its covered facilities file Toxic Release Inventory (TRI) Form Rs for the life of the contract. The TRI is a publicly available database of annual releases and transfers of toxic chemicals that was established pursuant to §313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and §6607 of the Pollution Prevention Act (PPA). The certification requirement does not apply to the acquisition of commercial items. For more information on EPCRA, see Section B.4 of this chapter. Chapter III provides information on PPA.

The requirement applies to all competitive acquisition contracts expected to exceed $100,000 with contractors having Standard Industrial Code designations that are covered by the TRI program. These contractors are exempt from the filing requirement if they do not manufacture, process, or use any toxic chemicals listed under EPCRA; have fewer than 10 full-time employees as specified in EPCRA; or do not meet the reporting thresholds established under EPCRA.

E.O. 12969 requires agency compliance to "the greatest extent practicable; however it makes clear that impracticability determinations should not be made lightly." For contracts expected to exceed $500,000, E.O. 12969 requires that the contracting agency consult with EPA before a final impracticability determination can be made.

Contractors must file TRI Form Rs on or before the next July 1 after the date on which a contract is awarded. July 1 is the deadline for submitting Form Rs for the previous calendar year. For example, forms submitted on or before July 1, 1996, cover the period January 1, 1995, through December 31, 1995. If a contractor fails to file TRI Form Rs, EPA may recommend termination of the contract for convenience. The head of the contracting agency will consider the recommendation and determine whether to terminate the contract. EPA shall provide technical advice and assistance to Federal agencies to assist them in complying with E.O. 12969. The requirements of the Order are implemented in the Federal Acquisition Regulation, Part 23.9.

A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*; E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements;* E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.

8. Summaries of Other Executive Orders

The following table provides a brief synopsis of additional executive orders with which Federal agencies must comply.

Table II-2: Summaries of Other Executive Orders

EXECUTIVE ORDER	SUMMARY
E.O. 11593 Protection and Enhancement of the Cultural Environment Issued: May 13, 1971	Requires agencies to nominate qualifying property for the National Register of Historic Places, maintain and restore historic sites, and work with the Department of Interior (DOI) in managing historic sites. Before a historic site is altered or destroyed, agencies must receive comments from the Advisory Council on Historic Preservation and provide the Library of Congress with detailed records of the property. DOI must encourage historic preservation, expedite the placing of Federal property on the National Register, support Federal historic preservation, and review surplus Federal property transfers.
E.O. 11988 Floodplain Management Issued: May 24, 1977	Restricts Federal support of development in floodplains by mandating the preparation of Environmental Impact Statements for projects in a floodplain, requiring Federal projects in a floodplain to meet National Flood Insurance Program standards, and requiring agencies to inform all participants of the dangers involved in floodplain activities.
E.O. 11990 Protection of Wetlands Issued: May 24, 1977	Restricts Federal support of development in wetlands and outlines the use of the National Environmental Protection Act process (such as an Environmental Impact Statement) in determining whether building in a wetland is necessary.
E.O. 12114 Environmental Effects Abroad of Major Federal Actions Issued: January 4, 1979	Requires Federal agencies with facilities located outside the United States to consider the impact of major actions on the environment. E.O. 12114 identifies four categories of "major" actions and requires Federal agencies with facilities overseas to establish procedures, in consultation with the Department of State and Council on Environmental Quality, for implementing the Order's requirements.
E.O. 12123 Offshore Oil Spill Pollution Issued: February 26, 1979 Amended: May 5, 1983	Delegates authorities of Outer Continental Shelf Land Acts Amendments of 1978 to the following agencies: the Department of Commerce or the Department of Interior administers natural resources; Federal Maritime Commission administers vessels and penalties on vessels; and the Department of Transportation administers offshore facilities. Amended by E.O. 12418, described below.

Table II-2: Summaries of Other Executive Orders (continued)

EXECUTIVE ORDER	SUMMARY
E.O. 12418 Transfer of Functions Relating to Financial Responsibility of Vessels for Pollution Liability Issued: May 5, 1983	Amends E.O. 12123 to establish Federal agency authority to respond to discharges or the substantial threat of discharge of oil and other hazardous materials from vessels into U.S.-owned waters or shorelines. Responsibility for enforcing the Oil Pollution Act is given to the U.S. Coast Guard.
E.O. 12737 President's Commission on Environmental Quality Issued: December 12, 1990	Establishes the President's Commission on Environmental Quality, consisting of up to 25 members recruited from private industry. The committee investigates environmental issues and produces an annual report on the state of the environment, detailing environmental issues and trends.
E.O. 12777 Implementation of §311 of the Federal Water Pollution Control Act of 1972, as amended, and the Oil Pollution Act Issued: October 18, 1991	Implements the Oil Pollution Act of 1990 by outlining emergency response procedures for managing spills of oil and hazardous materials into the waters inside U.S. jurisdiction. EPA, the U.S. Coast Guard, and the Departments of Defense, Interior, Agriculture, Commerce, and Energy participate in contingency planning.
E.O. 12843 Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances Issued: April 21, 1993	Directs Federal agencies to change their procurement policies to reduce the use of ozone-depleting substances prior to the 1995 phase-out deadline called for in the Montreal Protocol. Federal agencies are directed to modify specifications and contracts that require the use of ozone-depleting substances and to substitute non-ozone-depleting substances to the extent economically practicable. Through affirmative acquisition practices, the Federal government will provide leadership in the phasing out of these substances on a worldwide basis, while contributing positively to the economic competitiveness on the world market of U.S. manufacturers of innovative, safe alternatives.
E.O. 12844 Federal Use of Alternative Fueled Vehicles Issued: April 21, 1993	Requires Federal agencies to adopt aggressive plans to exceed the purchase requirements of alternative-fueled vehicles established by the Energy Policy Act of 1992.

Table II-2: Summaries of Other Executive Orders (continued)

EXECUTIVE ORDER	SUMMARY
E.O. 12845 Requiring Agencies to Purchase Energy-Efficient Computer Equipment Issued: April 21, 1993	Directs the U.S. government to participate in the EPA Energy Star computer program by agreeing to buy energy-efficient computers, monitors, and printers. To the extent possible, Federal agencies must purchase only computer equipment that meets the EPA Energy Star requirements. However, agency heads may grant, on a case-by-case basis, exemptions based on the commercial availability of qualifying equipment, significant cost differential of equipment, the agency's performance requirements, and the agency's mission. A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment;* E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*; E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements;* and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.
E.O. 13045 Protection of Children from Environmental Health Risks and Safety Risks Issued: April 21, 1997	Requires each Federal agency to make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children. E.O. 13045 also requires that each agency's policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks and safety risks. Establishes the Task Force on Environmental Health Risks and Safety Risks to Children, which includes representatives from the President's Cabinet and selected Federal agencies. The Task Force makes recommendations to the President on Federal strategies for children's environmental health and safety.
E.O. 13101 Greening the Government through Waste Prevention, Recycling, and Federal Acquisition Issued: September 14, 1998 (continued)	Strengthens and expands the Federal government's commitment to recycling and buying recycled-content and environmentally preferable products. E.O. 13101, among other things, elevates implementation of waste prevention and recycling activities to a new, White House-level Steering committee; discontinues all government purchases of printing and writing paper not containing 30 percent postconsumer fiber by the end of 1998; provides new ways for the Federal government to build markets for environmentally preferable products and services, which can reduce pollution, save energy and materials, and create jobs; *(continued)*

Table II-2: Summaries of Other Executive Orders (continued)

EXECUTIVE ORDER	SUMMARY
E.O. 13101 Greening the Government through Waste Prevention, Recycling, and Federal Acquisition Issued: September 14, 1998	increases government purchases of bio-based products to develop markets for these items; requires all Federal facilities to comply with recycling and recycled content purchasing requirements under the Federal Facility Compliance Act; and requires agencies to establish long-term goals both for waste prevention and recycling and for buying recycled and environmentally preferable products. Executive Order 13101 replaces E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention*.

III. CROSSCUTTING ENVIRONMENTAL ISSUES

This chapter discusses several crosscutting environmental issues that affect Federal facilities. Included is a discussion of pollution prevention, Federal government environmental awards and challenge programs, environmental justice, American Indian Tribes, innovative technology, Federal Facilities Environmental Restoration Dialogue Committee, formerly used defense sites, and environmentally beneficial landscaping requirements.

A. POLLUTION PREVENTION

Pollution prevention has become a national priority and, increasingly, a central ethic in many environmental programs. The passage of the Pollution Prevention Act (PPA) in 1990 and the issuance of Executive Order (E.O.) 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*, in 1993 helped to establish the Federal government's pollution prevention policy which directs EPA and other Federal agencies to promote source reduction. E.O. 12856 is discussed in more detail in Section D.4 of Chapter II and is printed in full in Appendix C.

A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements;* E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*; and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.

Pollution prevention is defined below:

POLLUTION PREVENTION DEFINED

Any practice which reduces the amount of hazardous substance, pollutant, or contaminant entering the waste stream or otherwise released to the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the release of such substances.

A new focus on prevention, as opposed to treatment, is reflected in the environmental management hierarchy of PPA, in which Congress established as national policy that:

< Pollution should be prevented or reduced at the source whenever feasible;

< Pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible;

< Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and

< Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

PPA required EPA to develop and implement a strategy to promote source reduction and identify measurable goals. In addition, it amended the reporting requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA) through its Toxic Chemical Release Inventory (TRI) and required the EPA Administrator to submit biennial reports to Congress detailing the steps EPA has taken to promote pollution prevention. For more information on EPCRA, see Section B.4 in Chapter II.

E.O. 12856 reinforces PPA by requiring Federal agencies to develop pollution prevention strategies and facility-specific plans and to set goals for eliminating the acquisition, manufacturing, processing, or use of toxic and hazardous substances. In addition, E.O. 12856 mandates that EPA establish an interagency task force to oversee its implementation and help set the long-term direction of the government's pollution prevention efforts.

By reducing or eliminating pollution at its source, rather than trying to control it after it has been produced, pollution prevention offers important environmental and economic benefits. Pollution prevention has the potential to increase efficiency in the use of raw materials, energy, water, and other resources and is proving to be a cleaner, safer, and more cost-effective alternative to the costs and liabilities associated with end-of-pipe waste management. Federal agencies can reduce their environmental impacts and costs associated with managing these impacts by incorporating pollution prevention into their facilities' activities.

EPA has integrated pollution prevention into its regulatory and enforcement programs. Since 1991, EPA has sought to modify its inspection and enforcement activities to encourage pollution prevention as the primary means of complying with Federal environmental requirements. For example, the *Final Supplemental Environmental Projects (SEP) Policy* allows EPA to consider SEPs (including pollution prevention projects) in deciding the final civil penalty for violations of environmental requirements. For more information on SEPs and the 1998 *Final Supplemental Environmental Projects Policy* see Sections A.2.b and C.6 of Chapter V.

The reorganization of EPA's Office of Enforcement has furthered the integration of pollution prevention into EPA programs by establishing a new multimedia division within the Office of Regulatory Enforcement, which is responsible for multimedia enforcement actions and encouraging the use of pollution prevention in settlements.

EPA has established several programs to assist Federal agencies in meeting Federal environmental responsibilities. Some of these programs are discussed on the following pages.

Pollution Prevention and EPA's Supplemental Environmental Projects Policy

The primary purpose of the 1998 *Final Supplemental Environmental Projects Policy* is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by the policy. The policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers. The policy applies to Federal agencies that are liable for the payment of civil penalties. Pollution prevention is one of the seven categories of projects identified by EPA's policy that may qualify as a SEP. For more information regarding EPA's SEP policy, see Chapter V, Sections A.2.b. and C.6.

Pollution Prevention Incentives for States/Tribes

The pollution prevention incentives for States grant program fosters the development of State pollution prevention programs while giving States flexibility in addressing local needs. Grants help States and Tribes enhance innovative and results-oriented programs, implement multimedia prevention approaches, and target high-risk, high-priority areas.

Pollution Prevention Opportunity Assessments

Pollution Prevention Opportunity Assessment (PPOA) is a tool used to define the specific characteristics of a single operation that creates environmental impacts (e.g. wastes, releases of toxic chemicals to the environment, power/water usage, habitat destruction). Specifically, PPOA is a systematic evaluation of processes and operations to:

- Characterize all aspects of the process or operation, including process flow, waste generation patterns, material and power consumption, costs, manpower, reliance on toxic chemicals;
- Define the impacts that the process and related wastes have on the air, water, and land;
- Associate impacts and wastes with specific unit operations; and
- Assign related costs and liabilities with specific wastes and management practices.

This detailed process information is used to identify, refine, and plan the implementation of pollution prevention technologies that will reduce the environmental impacts associated with the process. For more information see *Federal Facility Pollution Prevention: Tools for Compliance*, (EPA/600-R-94-154).

Multimedia Grants

The Multimedia Grants program awards grants for permitting, inspections, enforcement actions, and carrying out other Federal mandates under laws such as the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), and the Clean Water Act (CWA). Eligible applicants are States and Federally-recognized Indian Tribes.

33/50 Program

The 33/50 program seeks to reduce toxic waste generation by reducing the use of 17 chemicals by 33 percent by the end of 1992 and 50 percent by the end of 1995. More than 1,200 companies participate in this voluntary program, resulting in more than 354 million pounds of reductions in toxic chemical emissions.

Green Lights Program

The Green Lights program encourages voluntary reductions in energy use through more efficient lighting technologies. Green Lights participants are saving more than 371 million kilowatt-hours annually, which translated into $29.6 million in avoided electricity costs. Federal agencies involved in the Green Lights Program agree to conduct lighting surveys of their facilities, to upgrade the lighting to energy-efficient technologies wherever cost-effective, to document their efficiency improvements, and to help raise public awareness of energy-efficient lighting.

Energy Star Computers

The Energy Star Computers program fosters voluntary partnerships between EPA and computer manufacturers to develop energy-saving computers that automatically "power down" when not in use.

Agriculture in Concert with the Environment (ACE)

The ACE program is funded and administered jointly by EPA and the U.S. Department of Agriculture (USDA). ACE seeks to help farmers reduce the risk of pollution from pesticides and soluble fertilizers and safeguards environmentally sensitive areas, including critical habitats and wetlands.

The Toxic Chemical Release Inventory (TRI)

Through the TRI program, EPA collects and publicly disseminates information regarding the types and quantities of toxic chemicals that facilities are releasing into the environment. TRI is central in efforts to identify, target, measure, and reduce toxic chemicals. E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*, requires Federal agencies to reduce emissions and report annually under TRI. For more information on E.O. 12856, see Section D.4 of Chapter II and Appendix C.

Clean Technologies Program

This program focuses on improving environmental quality, efficiency, and competitiveness through the development and application of innovative pollution prevention methods and clean technologies. Under the Clean Technologies Program, EPA's Office of Research and Development creates and distributes a variety of technical documents on pollution prevention; works in partnership with other agencies, universities, and industry groups to develop and evaluate cleaner technologies; and provides technical assistance to various industries.

The following table lists several publications that provide current and useful information on the programs discussed above and other pollution prevention programs, conferences, technical assistance, and current events.

Table III-1: Pollution Prevention Documents

POLLUTION PREVENTION DOCUMENTS	DESCRIPTION OF DOCUMENT	HOW TO OBTAIN THE DOCUMENT
Pollution Prevention Directory	Contains information on EPA, Federal, and State pollution prevention programs, technical assistance for small businesses, and resources available in the pollution prevention field.	Pollution Prevention Information Clearinghouse (PPIC) U.S. EPA 401 M St., SW (3404) Washington, D.C. 20460 (202) 260-1023
Pollution Prevention Yellow Pages	Lists and describes State and local pollution prevention programs.	National Pollution Prevention Roundtable 218 D St., SE Washington, D.C. 20003 (202) 466-7272
Pollution Prevention News	Contains information on pollution prevention topics including reports from EPA offices, people and places in the news, State programs, and a calendar of conferences and events.	Pollution Prevention News U.S. EPA 401 M St., SW (7409) Washington, D.C. 20460
Federal Facility Pollution Prevention Planning Guide	Supports facilities in developing pollution prevention plans. The Guide contains an overview of pollution prevention and related E.O.s and lists pollution prevention guidance documents, technical assistance programs, and contacts.	Pollution Prevention Information Clearinghouse (PPIC) U.S. EPA 401 M St., SW (3404) Washington, D.C. 20460 (202) 260-1023

Table III-1: Pollution Prevention Documents (continued)

POLLUTION PREVENTION DOCUMENTS	DESCRIPTION OF DOCUMENT	HOW TO OBTAIN THE DOCUMENT
Federal Pollution Prevention in the Federal Government: Guide for Developing Pollution Prevention Strategies for E.O. 12856 and Beyond	Provides a framework to guide the development of pollution prevention strategies by each agency in the Federal government. It explains the context of legislation, policy, and Federal activity in the pollution prevention area. It also outlines goals and objectives and summarizes programs, tools, requirements, and resources that comprise the building blocks for Federal action in pollution prevention.	Pollution Prevention Information Clearinghouse (PPIC) U.S. EPA 401 M St., SW (3404) Washington, D.C. 20460 (202) 260-1023
Federal Facility Pollution Prevention: Tools for Compliance	Discusses environmental regulations and pollution prevention techniques for Federal agencies and how to ensure organizational support for establishing pollution prevention goals and objectives. It also explains how to conduct PPOAs.	U.S. EPA Office of Research and Development 26 West Martin Luther King Drive Cincinnati, OH 45268 (513) 569-7562
Meeting the Challenge: A Summary of Federal Agency Pollution Prevention Strategies	Discusses Federal agency strategies and commitments to pollution prevention and community right-to-know as established by E.O. 12856.	Pollution Prevention Information Clearinghouse (PPIC) U.S. EPA 401 M St., SW (3404) Washington, D.C. 20460 (202) 260-1023

Another source of information is the Pollution Prevention Information Clearinghouse (PPIC), which maintains a collection of documents on source reduction and recycling that are available nationwide through an interlibrary loan system. The PPIC's address and telephone number are provided in Table III-1, above.

B. FEDERAL GOVERNMENT ENVIRONMENTAL AWARDS AND CHALLENGE PROGRAMS

As the Federal government is one of the nation's largest employers, a concerted effort is needed to develop incentives to encourage a pollution prevention mind-set within the Federal workforce and make pollution prevention an operational tool. A Federal workforce trained in, and motivated by, pollution prevention concepts will foster broader changes as Federal employees interact with and motivate people in the public and private sectors to develop pollution prevention approaches.

One effective means of motivating and recognizing achievement is the establishment of awards and recognition programs. E.O.s 12856, 12902, and 13101 contain provisions for awards programs in pollution prevention. E.O. 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, establishes two awards: one to be presented annually by the White House to the most innovative program within the Federal government and the other to be developed internally by each agency to reward the most innovative environmental programs.

Several challenge programs also are included in the Orders. For example, E.O. 12902, *Energy Efficiency and Water Conservation at Federal Facilities*, directs the Department of Energy (DOE), in conjunction with other agencies, to issue a "Federal Procurement Challenge" inviting each Federal agency to commit a specified portion of its purchases to advanced, high-efficiency products.

E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention*, directs EPA to establish a Federal Government Challenge Program to recognize and reward outstanding environmental management performance in Federal agencies and facilities. This program serves as a subset of a broader Environmental Leadership Program proposed by EPA in 1993. It represents a national, voluntary effort to recognize and reward a long-term commitment to sustainable development by departments, agencies, and Federal installations. At the same time, the program ensures that voluntary Federal programs are credible and verifiable by establishing basic standards and public measures of success. Specifically, the program consists of two components:

< Federal agencies signing onto a Code of Environmental Management Principles emphasizing pollution prevention, sustainable development, and "beyond compliance" environmental management programs; and

< Individual Federal facilities submitting applications to EPA for recognition as "Model Installations." A good compliance record will be a prerequisite for admission into the program.

The program also provides for awards to individual Federal employees who demonstrate outstanding leadership in pollution prevention. For more information on the Code of Environmental Management Principles, see Chapter IV, Section F. For more information on E.O.s 12856, 12902, and 13101, see Section D of Chapter II and Appendix C. A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements;* E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*; and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.

C. ENVIRONMENTAL JUSTICE

Environmental justice is an emerging issue in environmental compliance and management. The definition of environmental justice is provided on the following page.

ENVIRONMENTAL JUSTICE DEFINED

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of Federal, State, local, and Tribal programs and policies.

EPA's environmental justice concerns focus on ensuring that environmental compliance, enforcement, and cleanup efforts are applied in all communities and that all communities can fully participate in a meaningful way in the environmental decisionmaking process by increasing public participation and access to information.

In response to public concerns, EPA created the Office of Environmental Equity in 1992 (renamed the Office of Environmental Justice) to raise awareness and integrate environmental justice into EPA's policies, programs, and activities. Environmental justice achieved a higher profile when E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, was signed. This Order establishes EPA's policy for Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental affects on minority or low-income populations. E.O. 12898 is discussed in detail in Section D.5 of Chapter II.

The Office of Environmental Justice serves as the point-of-contact for environmental justice outreach and educational activities, provides technical and financial assistance to stakeholders for environmental justice activities, and disseminates information about environmental justice. The Office has several functions, including the following:

< Establishing EPA's environmental justice program;

< Supporting the National Environmental Justice Advisory Council (NEJAC), a culturally and stakeholder diverse advisory group that provides advice to the EPA Administrator on environmental justice;

< Enhancing environmental justice outreach, training, and education;

< Providing minority and low-income communities with technical and financial assistance for community and economic development activities to address environmental justice issues;

< Serving as a clearinghouse for environmental justice information;

< Working closely with EPA's Indian Program to ensure communication and coordination;

< Providing interagency coordination of environmental justice programs; and

< Supporting research and environmental risk reduction projects.

In addition, the Office of Environmental Justice has established regional enforcement round table meetings to provide environmental justice community organizations with an opportunity to meet with EPA and other Federal, State, and municipal environmental agencies.

Environmental justice is a multifaceted issue that directly or indirectly affects nearly every aspect of environmental decisionmaking. EPA is incorporating environmental justice into all parts of its compliance and enforcement program. Several EPA environmental justice initiatives are briefly discussed below.

Environmental Justice and EPA's Supplemental Environmental Projects Policy

The primary purpose of the1998 *Final Supplemental Environmental Projects Policy* (effective May 1, 1998) is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by the policy. Although environmental justice is not listed as a particular SEP category in the policy, EPA encourages SEPs in communities where environmental justice may be an issue. The policy states that emphasizing SEPs in communities where environmental justice concerns are present helps to ensure that persons who spend significant portions of their time in areas or depend on food and water sources located near where the violations occur would be protected. The SEP policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers and applies to all Federal agencies that are liable for the payment of civil penalties. For more information on the *Final Supplemental Environmental Projects Policy*, see Chapter V, Sections A.2.b. and C.6.

Environmental Justice and the National Environmental Policy Act

The National Environmental Policy Act (NEPA) serves as the Nation's basic environmental protection charter. A primary purpose of NEPA is to ensure that Federal agencies consider the environmental consequences of their actions and decisions as they conduct their respective missions. To incorporate environmental justice goals into the preparation of environmental impact statements and environmental assessments conducted under NEPA, EPA's Office of Federal Activities developed the *Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* (April 1998). For more information regarding this guidance and the requirements of NEPA, see Chapter II, Section B.6.

Executive Steering Committee and Environmental Justice Policy Working Group

In 1994, EPA implemented a new organizational infrastructure to integrate environmental justice into EPA's policies, programs, and activities. This new agency organization created an Executive Steering Committee and an Environmental Justice Policy Working Group and named environmental justice coordinators in EPA Headquarters offices and its Regions. The new groups and coordinators work with the Office of Environmental Justice.

National Environmental Justice Advisory Council (NEJAC)

NEJAC is a Federal advisory committee that was established by charter on September 30, 1993, to provide independent advice, consultation, and recommendations to the EPA Administrator on matters related to environmental justice. NEJAC is made up of 25 members and 1 Designated Federal Official (DFO), all of whom serve on a parent council that has seven subcommittees. Along with the NEJAC members who fill subcommittee posts, an additional 39 individuals serve on the various subcommittees.

Each subcommittee, formed to address a specific topic and to facilitate the conduct of the business of NEJAC, has a DFO and is bound by the requirements of the Federal Advisory Committee Act. Subcommittees of the NEJAC meet independently of the full NEJAC and present their findings to NEJAC for review. Subcommittees cannot make recommendations independently of EPA.

Interagency Working Group on Environmental Justice

EPA formed the Interagency Working Group on Environmental Justice to address issues of environmental justice and develop guidelines to assist Federal agencies in implementing the strategic plan for action related to environmental justice that is required under E.O. 12898. The Environmental Justice Strategies from 13 Federal agencies, as directed under E.O. 12898, were submitted to the President in May 1995. Federal agencies submitted their Implementation Reports to the Interagency Working Group in May 1996.

Environmental Justice Small Grants Program

EPA's Office of Environmental Justice (OEJ) established the OEJ Small Grants Program to assist community-based/grassroots organizations and Tribal governments to address local concerns related to environmental justice. In FY 1998, approximately $2.5 million was available for the OEJ Small Grants Program; individual grants may total up to $20,000.

Federal Facilities Environmental Restoration Dialogue Committee

The *Final Report of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC)*, published in April 1996, contains special recommendations regarding efforts that Federal facilities should undertake to ensure that affected communities, particularly communities of color, indigenous peoples, and low-income communities, understand and participate in the cleanup process and that their values are reflected in the action taken.

The final FFERDC report recommended that Federal agencies adopt an environmental justice principle that ensures that concerns about environmental justice are taken into account when setting priorities for cleanup; that representatives of disadvantaged communities are included on community advisory boards; and that improvements are made in minority and small business contracting for cleanups at Federal facilities. For more information on FFERDC and its Final Report, see Section F of this chapter.

Federal Facilities Environmental Justice Enforcement Initiative (FFEJEI)

The Federal Facilities Enforcement Office (FFEO) has completed a focused Environmental Justice Enforcement Initiative at Federal Facilities. This initiative uses the most current TRI data reported by Federal facilities, coupled with enforcement and compliance data, to target facilities in low-income and minority populations for enforcement and compliance actions. FFEO is recommending that the EPA Regions plan and target multimedia inspections and related enforcement activities at the Federal facilities cited in the report. This initiative is expected to be a continuous effort because TRI information is reported annually by Federal facilities. For more information, see EPA's *Federal Facilities Environmental Justice Enforcement Initiative (FFEJEI)*, which was published in June 1997.

For further information on environmental justice, and EPA's environmental justice activities, contact the Office of Environmental Justice. Table III-2 below provides some additional resources available from EPA's Office of Environmental Justice.

Table III-2: Environmental Justice Documents

ENVIRONMENTAL JUSTICE DOCUMENTS	DESCRIPTION OF DOCUMENT
Environmental Equity: Reducing Risk for All Communities (June 1992)	Contains information on the original Equity Workgroup formed in 1990. It discusses the background and context of the Workgroup, defines the issues, and summarizes the Workgroup's findings and recommendations. This document also contains the complete findings of the Workgroup's subgroups.
Environmental Justice: Working Toward Solutions, Annual Report, 1996, EPA 300-R-97-004 (June 1997)	Summarizes environmental justice activities and programs of EPA. Reports on successful programs as well as present and future challenges.
Environmental Justice Implementation Plan (April 1996)	Outlines and describes the implementation plan of EPA's environmental justice strategy. This document discusses EPA's environmental justice themes and the mission areas of the Office of Environmental Justice.
Fact Sheet on E.O. 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, and Its Accompanying Presidential Memorandum	Summarizes E.O. 12898, related Federal agency responsibilities, and the accompanying Presidential Memorandum.
Federal Facilities Environmental Justice Enforcement Initiative (June 1997)	Discusses the preliminary results of the Federal Facilities Environmental Justice Enforcement Initiative.

Table III-2: Environmental Justice Documents (continued)

ENVIRONMENTAL JUSTICE DOCUMENTS	DESCRIPTION OF DOCUMENT
Final Report of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) (April 1996)	Contains a draft definition of environmental justice as well as recommendations regarding communities of color, indigenous peoples, and low-income communities.
Guidance for Incorporating Environmental Justice Issues in EPA's NEPA Compliance Analysis	Provides information to assist EPA staff responsible for developing EPA compliance documentation as required by NEPA, including Environmental Impact Statements and Environmental Assessments in addressing environmental justice.
National Environmental Justice Advisory Council and Subcommittees Proceedings	These documents contain the National Environmental Justice Advisory Council's meeting notes and thoroughly describes meeting remarks and proceedings.
1996 Waste Programs Environmental Justice Accomplishments Report, EPA 540-R-97-008 (June 1997)	Updates and documents the progress made throughout the Agency in addressing environmental justice in waste programs since the 1995 Report. Presents both crosscutting issues and program-specific issues.
Serving a Diverse Society: EPA's Role in Environmental Justice, EPA 200-F-93-003 (January 1994)	Describes environmental justice, EPA's role in environmental justice, and citizens' role in environmental justice.

FOR MORE INFORMATION

Environmental Justice Hotline: The Hotline was established to receive calls from concerned citizens about environmental justice issues in their communities. The purpose of the Hotline is to make information easily accessible to the public and the media and to assist in the resolution of environmental justice issues. The Hotline phone numbers are (202) 260-6357 and 1-800-962-6215.

Outreach and Special Projects Staff Environmental Justice Home Page:
http://www.epa.gov/swerosps/ej/

Office of Enforcement and Compliance Assurance Environmental Justice Home Page:
http://es.epa.gov/oeca/oejbut.html

Environmental Justice Small Grants Program Home Page: http://es.epa.gov/oeca/oej/grlink1.html

National Environmental Justice Advisory Council Home Page: http://www.ttemi.com/nejac/

D. AMERICAN INDIAN TRIBES

American Indian lands do not fall within EPA's definition of a Federal facility. However, environmental regulation of activities in Indian Country (see the adjacent box for a definition of Indian Country and Tribal Sovereignty) raises special compliance and enforcement issues. The U.S. government has a unique legal relationship with American Indian Tribal governments as set forth in the U.S. Constitution, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of Tribal sovereignty. It is the responsibility of the Federal government and its agencies to operate within a government-to-government relationship with Federally-recognized American Indian Tribes.

TRIBAL SOVEREIGNTY

Indian governments by virtue of their inherent sovereignty can exercise jurisdiction to regulate their own affairs as well as activities occurring within their territory. In determining whether a Tribe has jurisdiction over an activity, EPA conducts a fact-specific analysis which assesses whether there are actual or potential effects of the regulated activity on the Tribe that are serious and substantial, recognizing that environmental activities generally have serious impacts on human health and welfare.

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INDIAN COUNTRY

Indian Country is defined according to 18 U.S.C. §1151 as "all land within the limits of any Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

Federally-recognized Tribes are those that have a formal, recognized relationship with the U.S. government. The Tribes have retained many of their sovereign governmental powers. Federally-recognized Tribes possess all of the inherent powers of sovereignty except those that have been expressly limited by treaty or legislative statute or implicitly by the Tribes' status as domestic dependent Nations (see *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831)). The Federal government recognizes more than 562 Indian Tribes. In addition, it is estimated that there are more than 100 Tribes that are not Federally-recognized, including State-recognized Tribes. These Tribes have no formal government-to-government relationship with the U.S. government. In most instances, non-recognized Tribes are ineligible for Federal aid designated for Indian Tribes. However, non-recognized Tribes may be eligible for other sources of Federal funding, such as EPA's environmental justice grants. Additionally, a number of States have formally recognized Indian Tribes that reside within the boundaries of the State. Although this recognition does not convey any legal rights under Federal Indian law, it often acknowledges unique legal rights retained by or conveyed to the Tribe(s) within State law.

The *EPA Policy for the Administration of Environmental Programs on Indian Reservations* (hereinafter, referred to as *Indian Policy*) was issued in 1984 and has since been reaffirmed by every subsequent Agency Administrator, including Administrator Browner in March 1994. The policy is

intended to provide guidance to EPA staff and managers in dealing with Tribal governments and in responding to the problems of environmental management on Indian reservations to protect Tribal health and environments. The policy recognizes the government-to-government relationship between the Agency and Tribal governments, the Agency's trust responsibility, and the role of Tribes as the most appropriate party for regulating Tribal environments where they can demonstrate the authority and capability to do so. EPA assists Federally-recognized Tribes but in some instances also may provide funding and technical assistance to non-Federally recognized Tribes through the Environmental Justice program. The American Indian Environmental Office, established in 1994, is responsible for coordinating EPA's efforts to strengthen public health and environmental protection in Indian Country.

The American Indian Environmental Office

The American Indian Environmental Office (AIEO) oversees development and implementation of EPA's *Indian Policy*. AIEO coordinates EPA's efforts to strengthen public health and environmental protection in Indian Country, with an express emphasis on building Tribal capacity to manage their own environmental programs. AIEO ensures that all EPA Headquarters and Regional Offices implement the Agency's Indian Program in a manner consistent with EPA's *Indian Policy* and works with Tribes on a government-to-government basis. AIEO also ensures that EPA's trust responsibility to protect Tribal health and environments is carried out.

AIEO coordinates EPA policy toward American Indians and acts as a liaison between the Federally-recognized Tribes and EPA. Administration of individual media programs, such as air or water, remains the responsibility of the individual media offices. Specific AIEO responsibilities include:

< Providing multimedia program development grants to Tribes;

< Promoting the development of Tribal/EPA environmental agreements (TEAs) that identify Tribal priorities for building environmental programs and also for direct EPA program implementation;

< Developing tools to assist Tribal environmental managers in their decisions about environmental priorities;

< Developing training curricula for EPA staff on how to work effectively with Tribes; and

< Working to improve communications between EPA and its Tribal stakeholders in a number of ways, including assistance to EPA offices as they consult more closely with Tribes on actions that affect Tribes and their environments and support for regular meetings of the EPA's Tribal Operations Committee.

Programs established to address Tribal environmental program needs include pollution prevention assistance, TEAs, baseline assessment, and the Indian Environmental General Assistance Program (GAP). The objectives of GAP are to provide funds to Federally-recognized Tribal governments, to build capacity to administer environmental programs, and to provide technical assistance from EPA in the development of multimedia programs.

Tribal Management of Federal Environmental Programs

EPA has the authority to approve Tribal management of Federal programs under most environmental statutes. Originally, these statutes did not explicitly allow for authorization of Tribal programs. However, during the 1980's, several of EPA's statutes were specifically amended, requiring EPA to promulgate regulations for Tribes to receive program authorization. These amendments, coupled with EPA's 1984 *Indian Policy*, have allowed Tribes to increasingly be included in EPA's programs and operations.

EPA statutes that have been amended specifically to allow for EPA authorization of Tribal programs include the:

< Safe Drinking Water Act (SDWA);
< Clean Water Act; and
< Clean Air Act.

In several instances, EPA has reasoned that even though Congress has not specifically provided for Tribal assumption of environmental programs in legislation, the Agency has the discretion to allow for Tribal programs. One such statute where the opportunity to apply for environmental programs has been extended to Indian Tribes by this method is the Toxic Substances Control Act.

Also, in the Resource Conservation and Recovery Act (RCRA), Congress did not specifically provide for Tribal assumption of the prescribed programs. However, in *Backcountry Against Dumps* v. *EPA*, the Courts found that RCRA did not authorize EPA to extend to Tribes the opportunity to apply for the prescribed programs. Thus, to allow municipal solid waste landfills (MSWLFs) in Indian Country to have the same flexibility, design, and operating requirements as landfills under approved State programs, the Office of Solid Waste and Emergency Response issued guidance for operators of MSWLF in Indian Country.

Additionally, three other statutes allow for a limited Tribal role similar to the State's role. These are the:

< Federal Insecticide, Fungicide, and Rodenticide Act;
< Emergency Planning and Community Right-to-Know Act; and
< Comprehensive Environmental Recovery, Compensation, and Liability Act (CERCLA).

For further information on American Indian Tribes and EPA's *Indian Policy*, contact the American Indian Environmental Office. Also, for more information on the environmental statutes mentioned in this discussion, see Chapter II. Table III-3 on the following page provides some additional available resources that address American Indian Tribes.

Table III-3: Publications Pertaining to American Indian Tribes

PUBLICATIONS	DESCRIPTION OF DOCUMENT
American Indian Lands Environmental Support Project (AILESP) (October 3, 1997)	Provides a brief overview of AILESP, which is a project designed to integrate and assess current multimedia point-source releases, potential impacts of contaminants, and recent compliance and histories for facilities located on and near Indian lands.
EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984)	This document outlines principles to guide EPA in dealing with Tribal governments and in responding to the problems of environmental management on American Indian reservations.
Government-to-Government Relations with Native American Tribal Governments (April 29, 1994)	Memorandum to the heads of executive departments and agencies summarizing the Administration's policy regarding government-to-government relations with Tribal governments.
Indian Training Program: Working Effectively with Tribal Governments (August 1996)	EPA training manual that provides overviews of American Indian communities and cultures, Federal Indian law and policy, and environmental protection on Indian lands.
Indian Tribes: Eligibility for Program Authorization (*Federal Register*, December 14, 1994)	Describes regulations addressing the role of Indian Tribes to make it easier for Tribes to obtain EPA approval to assume the role Congress envisioned for them under certain environmental statutes.
Memorandum of Actions for Strengthening EPA's Tribal Operations (July 12, 1994)	Outlines steps needed to address gaps in Tribal environmental protection and to improve EPA's government-to-government partnership with Tribes.
Native American Network newsletters (e.g., February 1998, EPA 530-N-98-002)	The newsletters, which are published quarterly, provide information to help interested parties stay informed about municipal solid waste management issues affecting Indian Country. Feature articles on Tribal waste management programs, information about important laws, tips for obtaining funding, and updates on conferences and publications.
Partnerships in Solid Waste Management, EPA 530-F-97-050 (December 1997)	Describes working in partnerships with other Tribes, States, or local governments to address solid waste management issues. Discusses why partnerships are beneficial, what obstacles impede partnership, and how to develop a partnership agreement. Provides a list of partnership resources.
Waste Management in Indian Country, EPA 530-F-97-019 (May 1997)	Clarifies for owners/operators of municipal solid waste landfills (MSWLF) in Indian Country the effective dates for EPA's MSWLF rules and explains how owners/operators can realistically meet these deadlines.

FOR MORE INFORMATION

American Indian Environmental Office Home Page: http://www.epa.gov/indian/

Municipal Solid Waste Management in Indian Country Home Page: http://www.epa.gov/tribalmsw/

E. INNOVATIVE TECHNOLOGY

Over the past decade, increasing attention has been paid to environmental technology, reflecting demands for improvement in environmental quality and recognition of the growing costs of treating waste and pollution. Innovative or more cost-effective technologies are being pursued on several fronts through 1) improvements in add-on technologies to control pollution before it enters the environment, 2) development of new or less costly technology to treat or clean up waste after it enters the environment, and 3) development of cleaner technologies or pollution prevention approaches that produce less waste and are often more energy-efficient than conventional control technologies.

National Environmental Technology Strategy

In April 1995, President Clinton and Vice President Gore signed the *National Environmental Technology Strategy*, a report that addresses environmental technology strategies that foster economic growth while improving and sustaining the environment. The following five themes are highlighted in this report to establish a framework for partnerships, goal setting, policy development, and action:

< Develop a new generation of incentive-based policies and programs that stress performance, flexibility, and accountability;

< Facilitate research, development, and demonstration programs with a broadening focus ranging from environmental damage control to anticipation and avoidance of environmental damage;

< Develop a wide range of complementary policies to support investment and diffusion of successful technologies, with an emphasis on precommercial environmental technologies;

< Ensure a more sustainable technological base for U.S. communities, thereby increasing the quality of urban, suburban, and rural life; and

< Encourage Federal partnerships for the advancement of environmental technologies through Federal/private sector investment in technology and the active encouragement of education and training programs that highlight the challenges and opportunities involved in sustainable development and environmental technologies.

In response to such demands, Federal funding for environmental technology research, development, and demonstration has expanded. Several different agencies have placed increased emphasis on environmental technology, including EPA, DOE, Department of Defense (DoD), and the Department of Commerce (DOC). In EPA the initiatives fall under the following four categories:

< Adaptation of the regulatory system to lower barriers to technological innovation;

< Encouragement of technology partnerships with public and private sectors;

< Evaluation of innovative technologies for Superfund and other programs; and

< Media-specific activities to support regulatory functions.

Environmental Technology Initiative

EPA is the lead agency for the Federal government's Environmental Technology Initiative (ETI), which includes participation by the National Science Foundation, DOE, DoD, USDA, and DOC. ETI's initiatives fall under four major categories:

< *Environmental and Restoration Technologies*: Developing research, demonstration, testing, and evaluation of monitoring, pollution prevention, control, and remediation technologies.

< *Clean Technology Use by Small Business*: Providing technical assistance for pollution prevention; participating in joint research and development efforts with industry; and catalyzing design of safer chemicals, products, and processes.

< *U.S. Technology for International Solutions*: Promoting the use of U.S. technologies and expertise abroad through technical assistance, training, demonstrations, market and needs assessment, and participation with industry in international standards' development.

< *Gaps, Barriers, and Incentives*: Identifying environmental technology gaps and needs; seeking to identify and remedy regulatory barriers and to test and evaluate innovation; and promoting friendlier permitting, inspection, and enforcement approaches.

FFEO promotes the application of innovative technologies at Federal facilities through compliance and cleanup agreements. The ETI encourages incorporation of innovative technology in appropriate EPA/Federal agency enforcement and cleanup agreements. This will promote flexibility, risk-sharing, and limited incentives while reserving enforcement discretion.

FFEO's participation in the ETI involves the development of pilot projects. The pilot projects will be conducted at selected Federal facility sites that are subject to cleanup and compliance agreements. The pilots will involve a negotiated effort to apply promising new technologies at sites for cleanup and/or pollution prevention, where their application may require adjustment of milestones or enhanced flexibility of other aspects of enforcement agreements. Pilot projects also may include the use of innovative technologies for environmental projects such as SEPs. For more information on SEPs, see Chapter V, Sections A.2.b and C.6.

Technology Innovation Strategy

EPA's Technology Innovation Strategy applies to EPA's own activities and guides priorities for the EPA-led ETI. The strategy has four objectives:

< *Objective 1*: Adapt EPA's policy, regulatory, and compliance framework to promote innovation;

< *Objective 2*: Strengthen the capacity of technology developers and users to succeed in environmental technology innovation;

< *Objective 3*: Strategically invest EPA funds in the development and commercialization of promising new technologies; and

< *Objective 4*: Accelerate the diffusion of innovative technologies at home and abroad.

Policy for Innovative Technologies at Federal Facilities

FFEO encourages Federal facilities to apply innovative technologies to the full range of their management practices and programs to prevent pollution, achieve compliance, and clean up contaminated sites.

On August 19, 1994, the *EPA Policy for Innovative Technologies at Federal Facilities* was signed by the EPA Administrator and issued to promote and support the use of Federal facilities as demonstration and test centers for the development and application of innovative environmental technologies. The policy recognizes that Federal facilities offer unique opportunities for the development and application of both field-site characterization and cleanup technologies. The August 1994 policy identified several activities that EPA will undertake. These include:

< Actively seeking State, community, and other stakeholder support and involvement in Agency policies that affect environmental technologies and in Federal facility technology development and demonstration projects;

< Focusing on private sector involvement to 1) enhance technology commercialization, job development, and economic growth; and 2) highlight real application and early field work for current cleanups and the prevention of future pollution;

< Seeking opportunities to use innovative technology to reduce or eliminate waste or pollution;

< Increasing cooperative efforts with the Federal and private sectors to determine how technology may factor into remedy selection;

< Exercising leadership in the development of a coordinated interagency strategy that introduces the concept of utilizing Federal facilities as technology development and demonstration centers for pollution prevention, control, and site investigation/cleanup; and

< Providing direction by sponsoring informational and policy meetings on innovative technologies.

The policy also encourages the incorporation of innovative technology conditions in appropriate EPA/Federal agency cleanup and compliance agreements. FFEO is currently developing a policy for incorporating such conditions in enforcement settlements at Federal facilities.

The Office of Solid Waste and Emergency Response (OSWER) Policy Directive 9380.0-25, *Promotion of Innovative Technologies in Waste Management Programs* issued in April 1996, also reaffirmed EPA's commitment to using Federal facilities as demonstration and test centers for innovative environmental technologies.

Develop On-Site Innovative Technologies

A Federal Advisory Committee to Develop On-Site Innovative Technologies (DOIT) was chartered in December 1992 to create a more cooperative approach for developing technical solutions to environmental restoration and waste management problems shared by States, commercial entities, and the Federal government. The DOIT Committee set out to identify new approaches to overcome major barriers to new technologies including 1) regulatory barriers to new technologies, 2) barriers to commercializing successfully demonstrated technologies, and 3) barriers created by not involving Tribal and stakeholder representatives effectively in technology assessment.

The principal finding of the DOIT Committee was that the barriers to broader deployment of more cost-effective technologies to clean up waste sites are primarily regulatory and institutional inertia. The DOIT Committee concluded that despite the benefits, innovative technologies are often not chosen to clean up waste sites because of regulatory uncertainty, lack of comparable cost and performance data, insufficient signals from the top down to encourage the use of innovative solutions, and lack of public trust. The Committee recommended that State and Federal agencies:

< Improve performance and reduce costs through expanded regulatory options that encourage innovation;

< Stimulate economic growth and reduce costs by creating regional and national markets for innovative technologies; and

< Cut costs and expedite cleanup through collaborative partnering among regulators, Federal agencies, Tribes, and stakeholders.

For more information on DOIT and the DOIT Committee's findings, see the *Collaborative Approaches That Save Time and Money in Western Federal Site Cleanup, Final Report of the Federal Advisory Committee to Develop On-Site Innovative Technologies*, Western Governors' Association (June 1996).

For more information on Federal programs related to environmental technologies, see *Bridge to a Sustainable Future: National Environmental Technology Strategy,* National Science and Technology Council (1995).

FOR MORE INFORMATION

Environmental Technology Verification Program: http://www.epa.gov/etv/

F. FEDERAL FACILITIES ENVIRONMENTAL RESTORATION DIALOGUE COMMITTEE

The Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) was a Federally-chartered advisory committee chaired by EPA and coordinated by the Federal Facilities Restoration and Reuse Office. The FFERDC charter expired in September 1996. The undertaking and finalization of its final report was a notable accomplishment for all the Federal and State agencies as well as the Tribal governments and other stakeholders involved in the process. Since the release of the report, a variety of entities associated with cleanups at Federal facilities are implementing and embracing the consensus principles of the report. The goal of the committee was to improve the environmental cleanup process at Federal facilities.

FFERDC's 50 members represented a broad range of stakeholders in the cleanup of Federal facilities, including the EPA; DoD; DOE; USDA; the Department of the Interior; the National Oceanographic and Atmospheric Administration; the Agency for Toxic Substances and Disease Registry; and State, Tribal, and local governments; as well as citizen, environmental, environmental justice, and labor organizations. Members were appointed by the Principal Deputy Assistant Administrator of EPA's Office of Solid Waste and Emergency Response.

In April 1996, FFERDC issued its final report, *Consensus Principles and Recommendations for Improving Federal Facilities Cleanup*. The report provides a framework for addressing the complex issues related to environmental contamination at Federal facilities, including establishing and maintaining community involvement programs, creating restoration/site-specific advisory boards (RAB/SSAB), setting cleanup priorities, allocating cleanup funds, and building the capability of all those involved in Federal facility cleanups to participate more effectively in cleanup decisions. More than 270 installation in the United States and its territories are participating in RABs, and 12 SSABs were established across the country.

Chapter 6 of the April 1996 FFERDC report focuses on capacity building and recommends that special efforts be undertaken to consult with those groups that have been commonly excluded from the decisionmaking process (including communities of color, indigenous peoples, and low-income communities) and to expand and develop their capacities to participate effectively in such processes. The FFERDC report also recommends that Federally-regulated and Federal regulating agencies need to expand their capacities to communicate and work with the wide diversity of stakeholders affected by Federal facilities cleanups. The FFERDC report noted that because Federal facilities cleanup issues are so complex, Federal agencies; State, Tribal, and local governments; communities; and other stakeholders must forge partnerships to make the best decisions possible to address environmental contamination at Federal facilities. For more information on environmental justice and American Indian Tribes, see Sections C and D of this chapter.

FOR MORE INFORMATION

Final Report of the Federal Facilities Environmental Restoration Dialogue Committee: Consensus Principles and Recommendations for Improving Federal Facilities Cleanup (April 1996). This final report is available at http://www.epa.gov/swerffrr/ferdcrpt/toc.htm

Improving Federal Facility Cleanup: Report of the Federal Facilities Policy Group (October 1995)

A Stakeholders Guide to Clean up of Federal Facilities (June 1998)

CPEO-Military Newsgroup. The Center for Public Environmental Oversight's (CPEO, formerly CAREER/PRO) cpeo-military newsgroup links hundreds of public stakeholders, government employees, private industry, and academia. The newsgroup provides up-to-the-minute news on military environmental issues. CPEO also provides a forum for dialogue among the participants and a platform for raising questions to high-level government officials. To join the newsgroup, send an e-mail request to cpeo@cpeo.org (formerly cpro.military).

G. FORMERLY USED DEFENSE SITES

Real properties that were formerly owned, leased to, possessed by, or otherwise under the operational control of DoD are known as formerly used defense sites or FUDS. FUDS range from privately-owned farms to National parks and include residential areas, schools, colleges, and industrial areas. The FUDS program, which is administered by the U.S. Army Corps of Engineers (the Corps) involves the identification and cleanup (if necessary) of those FUDS that have environmental damage caused by previous military operations on or near the property. Cleanup of FUDS may require compliance with one or more environmental laws, such as CERCLA, RCRA, SDWA, CAA, and CWA. Additionally, the Corps must coordinate its FUDS activities with EPA and the States.

The Corps' FUDS program generally entails three major phases: inventory, study, and removal/remediation. The inventory phase includes searches of real estate records to verify previous DoD ownership or usage. As part of the inventory process, a preliminary assessment is made to determine the site eligibility and the need for cleanup. The preliminary assessment conducted by the Corps is only a very limited look at the site. If no apparent contamination is found, then no further action will be taken by the Corps. The study phase consists of a site inspection to confirm contamination and studies to determine the extent of the contamination and how best to clean it up. The removal/remediation phase consists of the necessary site cleanup and any operation and maintenance activities. Once site work is complete, the Corps inspects the site to confirm that the site no longer poses a problem.

H. ENVIRONMENTALLY BENEFICIAL LANDSCAPING

The Report of the National Performance Review recommended an increase in environmentally and economically beneficial landscaping practices at Federal facilities and Federally-funded projects. In response, on April 26, 1994, President Clinton issued a Memorandum to the Heads of Executive Departments and Agencies titled *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds*.

Environmentally beneficial landscaping entails using techniques that complement and enhance the local environment and seek to minimize the adverse effects of landscaping. In addition to benefitting the environment, these practices should generate long-term cost savings for the Federal government.

On Federal grounds, Federal projects, and Federally-funded projects, the President's Memorandum directs agencies, where cost-effective and to the extent practicable, to:

< Use regionally native plants for landscaping;

< Design, use, or promote construction practices that minimize adverse effects on the natural habitat;

< Seek to prevent pollution by, among other things, reducing fertilizer and pesticide use, using integrated pest management techniques, recycling green waste, and minimizing runoff;

< Implement water-efficient practices, such as the use of mulches, efficient irrigation systems, audits (to determine exact landscaping water-use needs and recycled or reclaimed water), and the selection and siting of plants in a way that conserves water and controls soil erosion; and

< Promote awareness of the environmental and economic benefits of implementing this directive by creating outdoor demonstrations incorporating native plants plus pollution prevention and water conservation techniques. Agencies also are encouraged to develop other methods for sharing information with interested non-Federal parties.

To assist agencies in implementing this directive, the President's Memorandum required that an interagency working group be established to develop a set of recommendations for guidance and issue the guidance by April 1995. Agencies were to incorporate this guidance into their landscaping programs and practices by February 1996 and report to the Federal Environmental Executive by April 1996 on their progress.

The Memorandum also directs USDA to conduct research on the suitability, propagation, and use of native plants for landscaping. USDA is to make available to agencies and the public the results of this research.

A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* and several executive orders (E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention*

Requirements; E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; and E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*). The new executive order is currently being reviewed at the Office of Management and Budget.

IV. MONITORING FEDERAL FACILITY COMPLIANCE

Chapter IV discusses why and how EPA, States, and Tribes monitor Federal facility activities. It includes a discussion of the goals and objectives of EPA's Federal facility compliance program and identifies the tools frequently employed to monitor Federal agency compliance. Specific topics discussed in Chapter IV include coordination between EPA Regions and the States on Federal facility compliance; the reporting and recordkeeping activities that are required of Federal facilities; the Code of Environmental Principles; Environmental Management Systems; inspections of Federal facilities by EPA, States, and/or Tribes; audits conducted by the facilities themselves; and Federal Agency Environmental Management Program Planning, commonly referred to as FEDPLAN.

A. MONITORING FEDERAL FACILITY COMPLIANCE

EPA monitors activities at Federal facilities for a variety of reasons, the most important of which is to determine whether Federal facilities, like private entities, are in compliance with environmental laws. Compliance monitoring activities also allow EPA to identify ways in which the Agency can assist Federal facilities in achieving and maintaining compliance. To help ensure Federal facility compliance, the Federal Facilities Enforcement Office (FFEO) has established a Federal facilities compliance program. The overall goal of the program is to achieve and maintain high rates of compliance at Federal facilities. To meet this goal, EPA has established the following objectives:

- Review the compliance status of Federal facilities to identify potential violations;
- Establish a strong enforcement presence at all Federal agencies that have facilities or lands with a potential for environmental impact;
- Collect evidence to support enforcement actions for identified violations; and
- Develop an understanding of compliance patterns within Federal agencies to 1) assist in targeting inspection activities, 2) establish compliance assistance and enforcement priorities, 3) evaluate program strategies, 4) communicate information to the public, and 5) prevent recurring violations.

Most compliance programs rely on facility inspections as the primary tool for determining compliance. Key to these inspections are statutory requirements that Federal facilities conduct specific activities, maintain certain records, and provide information to EPA and the States. Facility records are inspected to determine compliance rates under various environmental statutes. Reporting, recordkeeping, and inspection requirements are discussed in more detail in Sections C and D of this chapter. The States' and Tribes' roles in compliance activities, recordkeeping and reporting, and inspections are discussed on the following page.

B. STATE/TRIBAL ROLES IN COMPLIANCE MONITORING

States are actively involved in monitoring Federal facility compliance. Under many of the environmental laws, States have the primary responsibility for determining a facility's environmental compliance. States are interested in ensuring that Federal facilities are complying with both Federal and State environmental requirements. A State may conduct monitoring activities on its own or may work jointly with EPA to undertake those activities. Tribal governments also may be involved in compliance monitoring. Federal facility personnel should be prepared to work with Federal, State, and Tribal representatives. When a State/Tribe is delegated the responsibility or is authorized to implement a Federal environmental program, it will possess the same inspection and recordkeeping/reporting enforcement authorities as EPA. For more information on American Indian Tribes, see Chapter I and Section D of Chapter III.

States meet with EPA regional staff on a regular basis to share compliance information and to coordinate inspections. EPA Regions meet with State representatives to identify and discuss patterns of noncompliance at Federal facilities, including any violations or compliance patterns identified through EPA or State inspections. Regions may hold one meeting for all States or hold a separate meeting for each State. A report is prepared by the Regional Federal Facility Coordinators (FFCs) in consultation with the media program offices. In addition, States generally provide EPA Regions with compliance information (e.g., inspection reports, enforcement settlements) on a quarterly or monthly basis.

C. FACILITY REPORTING AND RECORDKEEPING REQUIREMENTS

Most of the major pollution control statutes provide EPA (and delegated or authorized States/Tribes) with broad authority to obtain information from regulated entities, including Federal facilities. In some cases, the statutes require regulated entities to collect specified information and report to EPA and/or States. The statutes also often authorize EPA to require facilities to compile, store, and report data to verify compliance. EPA and States may use monitoring and reporting data in targeting inspections and in other compliance monitoring activities. These provisions for reporting, recordkeeping, and self-monitoring can be summarized into the following six broad categories:

- Reports of information needed for regulatory matters in response to specific orders from EPA;
- Reports of compliance or other pollution data in response to specific orders;
- Periodic monitoring data, as required by statute;
- Notification and reports of problems and emergencies;
- Non-emergency notification requirements; and
- Recordkeeping.

Tables IV-1 through IV-9 on the following pages present the major reporting and recordkeeping requirements for the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Emergency Planning and Community Right-to-Know Act (EPCRA), Oil Pollution Act (OPA), Toxic Substances Control Act (TSCA), Pollution Prevention Act (PPA), and Safe Drinking Water Act (SDWA).

Table IV-1: Major CAA Reporting and Recordkeeping Requirements

CAA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Reporting Requirements	51.211; 51.214(e); 51.322; 51.855; 52.21(n); 60.58c(a)(c); 60.7(a); 60.7(c) with amplifying information in applicable Subparts 60.19; 60.8(a); 61.24; 61.54(b); 61.69; 61.70; 61.94; 61.247; 61.275; 61.305(f); 63.10(d); 63.7(g); 63.8(e), 63.10; 63.182(d); 63.347; 63.366(a); 63.468; 63.753; 63.788(c); 64.9(a); 70.6; 71.6	Upon request of the Administrator, the owner or operator shall provide information on the air quality impact of a new source or modification (including performance testing) and the air quality impacts of general commercial, industrial, or other growth that occurred since August 7, 1977. The Administrator may also request additional performance test information after source start-up. Specific periodic performance reporting is required for stationary sources subject to emissions reports and continuous emission monitoring reports under Part 51, Subpart K; specific point sources identified in Part 51.322 that are subject to annual emissions reporting; conformity determination reports to EPA, State, and local air pollution control agencies; sources subject to new source performance standards (NSPS) in Part 60; sources subject to National Emission Standards for Hazardous Air Pollutants (NESHAP), performance testing of NESHAP sources, and continuous emission monitoring under Part 64; and periodic reporting under Title V operating permits.
Notification and Reports of Problems and Emergencies	60.7(a); 68.95; 70.6(g); 71.6(g)	Notification and reports of problems and emergencies to the Administrator (and other State and local agencies, as appropriate) are required in response to the following: operational problems or excess emissions from NSPS sources; releases or accidents at facilities subject to risk management planning; and emergencies or operational problems at facilities with Title V operating permits.

Table IV-1: Major CAA Reporting and Recordkeeping Requirements (continued)

CAA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Non-Emergency Notification	51.166(n); 52.21(n); 52.28; 60.7(a); 61.09; 61.10; 61.145(b); 61.154(j); 61.155(a); 61.274; 63.7(b); 63.8(e); 63.9; 63.182(b); 63.347(c)(d)(e); 63.366(c); 63.468(b); 63.753(a); 63.787; 70.6(a); 71.6(a); 82.42; 82.162(a); 82.166	Non-emergency notification is required under the following circumstances: information submittals to support prevention of significant deterioration of air quality permits, and relocation notifications; notification for construction, start-up, monitoring, and reporting requirements for NSPS-regulated facilities; written notification of intent to start up operation of a Part 61 NESHAP-regulated facility and nature of source/emissions not more than 60, nor less than 30, days prior to start-up date; written notice of asbestos demolition, renovation, conversion, or disposal activities; notification to the Administrator at least 60 days prior to the scheduled start of performance testing of Part 63-regulated NESHAP sources; start up and operation of sources subject to NESHAP; reporting requirements (at least every 6 months) for monitoring and deviations from conditions specified in Title V operating permits; and notification of the acquisition and use of chlorofluorocarbon recycling and recovery devices.
Recordkeeping	60.7(f); 60.58; 61.25; 61.71; 61.246; 61.276; 61.305; 61.356; 63.7(g); 63.8(d); 63.10(b); 63.181; 63.324; 63.346; 63.367; 63.467; 63.752; 63.788; 64.9(b); 68.200; 70.6(a); 71.6(a); 82.42; 82.162; 82.166	The Administrator may require the following parties to maintain records: owners/operators of sources subject to NSPS; owners/operators of NESHAP sources; owners/operators of hospital, medical, or infectious waste incinerators; owners/operators of sources subject to continuous emissions monitoring; sources subject to risk management planning under Part 68; owners or operators of sources subject to Title V operating permit requirements; manufacturers of new motor vehicles, engines, engine parts, or components; and organizations purchasing, using, or servicing regulated ozone-depleting substances (ODSs) and ODS-containing equipment.

Table IV-2: Major CWA Reporting and Recordkeeping Requirements

CWA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Reporting Requirements	NPDES Permits 122.21(e), (j) 122.21 (g)(13) NPDES Permits 122.41(l)(4) Industrial Dischargers to POTWs 403.12(b), (d) Industrial Dischargers to POTWs 403.12(e), (h), (i)	Permitting agencies may request supplemental information to determine whether a permit is required. Periodic Discharge Monitoring Reports are required by NPDES permits. Permitting agencies may request, at their discretion, reports on continuing compliance in addition to the periodic reports. Periodic reports (either annually or every 6 months) are required for monitoring of discharges into Publicly-Owned Treatment Works (POTW).
Emergency Notification	NPDES Permits 122.41(1)(6)	Facilities must notify the permitting authority within 24 hours of any noncompliance that may endanger human health or the environment.
Non-Emergency Notification	NPDES Permits 122.41 (h), (l)(l), (1)(2), (1)(8) Industrial Dischargers to POTWs 403.12(b), (j)	Permittee shall give notice as soon as possible of changes to the facility and of any anticipated non-compliance. Industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in a discharge.
Recordkeeping	NPDES Permits 122.41(j)(2), (3) POTWs 403.12(o)	Monitoring reports must be kept at least 3 years and shall contain information specified in the respective regulation.

Table IV-3: Major RCRA Reporting and Recordkeeping Requirements

RCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Reporting Requirements	262.41; 262.43; 262.44; 262.56; 262.85(g); 262.87(a); 264.75; 265.75; 280.34	The Administrator, as deemed necessary under RCRA §§2002(a) and 3002(a) and (b), may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 CFR Part 261. A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to certain reporting and recordkeeping requirements as set forth in 40 CFR 262.40(a), (c) and (d), which pertain to recordkeeping; and 40 CFR 262.43, which pertains to additional reporting. Upon request by EPA, U.S. notifiers, consignees, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity) for hazardous waste imports and exports under 40 CFR 262, Subpart H. Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2. Owners and operators of UST systems must cooperate fully with inspections, monitoring, and testing conducted by the implementing agency, as well as with requests for document submission, testing, and monitoring by the owner or operator pursuant to §9005 of Subtitle I of RCRA, as amended. Generators and owners and operators of TSDFs must file biennial reports (see EPA Forms 8700-13A and 8700-13B). *(continued)*

Table IV-3: Major RCRA Reporting and Recordkeeping Requirements (continued)

RCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Reporting Requirements (continued)	262.41; 262.43; 262.44; 262.56; 262.85(g); 262.87(a); 264.75; 265.75; 280.34	Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. The information that must be included in the reports is specified in 40 CFR 262.56. All waste movements subject to 40 CFR 262, Subpart H (Transfrontier Shipments of Hazardous Waste for Recovery Within the OECD), persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in 40 CFR 262.51 shall file an annual report in accordance with 40 CFR 262.87(a) no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.
Notification and Reports of Problems and Emergencies	262.42; 262.55; 262.87(b); 263.30; 264.56(d); 264.56(i); 264.56(j); 264.77; 265.77; 266.203(a)(1); 266.205(a)(v); 280.50; 280.53; 280.61	A generator of greater than 1000 kilograms of hazardous waste in a calendar month must submit an exception report to the EPA Regional Administrator if a copy of the manifest is not received from the owner or operator of a facility within 45 days of the date the waste was accepted by the initial transporter. A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to certain reporting requirements as set forth in 40 CFR 262.42(b), which pertains to exception reporting. 40 CFR 262.42 specifies the information that must be included in exception reports. In accordance with 40 CFR 262.55 and 262.87(b), a primary exporter must file an exception report with the Administrator if the primary exporter has not received a copy of the signed manifest or tracking document from the transporter within 45 days. Also, the primary exporter must file an exception *(continued)*

Table IV-3: Major RCRA Reporting and Recordkeeping Requirements (continued)

RCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Notification and Reports of Problems and Emergencies (continued)	262.42; 262.55; 262.87(b); 263.30; 264.56(d); 264.56(i); 264.56(j); 264.77; 265.77; 266.203(a)(1); 266.205(a)(v); 280.50; 280.53; 280.61	report, if within 90 days the primary exporter has not received written confirmation from the consignee or recovery facility that the hazardous waste was received, or if the waste is returned to the United States. A transporter must report a discharge of hazardous waste, if required by 49 CFR 171.15, to the National Response Center. Owners and operators of UST systems must notify the implementing agency of suspected releases, spills and overfills, and confirmed releases. Releases from UST systems must be reported to the implementing agency within 24 hours or another reasonable time period specified by the implementing agency. 40 CFR 264.56(d) and (i) requires owners and operators of TSDFs to report releases, fire, or explosions to local authorities, the designated on-scene coordinator or National Response Center; and notify the Regional Administrator and appropriate State and local authorities that the facility is in compliance before operations are resumed. Facilities or transporters of waste military munitions, as described under 266.203(a)(1), must provide oral notice within 24 hours of any loss or theft of waste military munitions. Facilities also must submit written documentation within 5 days describing circumstances or any conditions that may endanger health or the environment. Receiving facilities must provide notification if waste is not received within 45 days of being shipped.

Table IV-3: Major RCRA Reporting and Recordkeeping Requirements (continued)

RCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Non-Emergency Notification	262.12; 262.53; 262.83; 262.84(e); 263.11; 264.12; 265.12; 266.205(a)(1); 266.205(a)(i); 266.205(a)(iv); 280.22; 280.34; 280.64; 280.65; 280.66; 280.71	Generators and transporters must have an EPA identification number to treat, store, dispose of, transport, or offer for transportation, hazardous waste. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Regional Administrator in writing at least four weeks in advance of the date of the waste is expected to arrive at the facility. Any owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit in accordance with 40 CFR 280.22, a notice of existence of such tank system to the State or local agency or department designated to receive such notice. In accordance with 40 CFR 280.34, owners and operators of UST systems must submit specific information such as notification for all UST systems, reports of all releases (including suspected releases, spills, and overfills), corrective actions planned or taken, and notification before permanent closure or change-in-service. Unless directed to do otherwise by the implementing agency, owners and operators of USTs must prepare and submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides the information specified in 40 CFR 280.64. Also, in accordance with 40 CFR 280.65, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release, and submit the information collected as soon a practicable or in accordance with a schedule established by the implementing agency. Requirements for corrective action plans also are contained in 40 CFR 280.66 that pertain to corrective action plans. *(continued)*

Table IV-3: Major RCRA Reporting and Recordkeeping Requirements (continued)

RCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Non-Emergency Notification (continued)	262.12; 263.11; 264.12; 265.12; 266.205(a)(1); 266.205(a)(i); 266.205(a)(iv); 280.22; 280.34; 280.64; 280.65; 280.66; 280.71	A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted 60 days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a 12 month or lesser period. The notification must be in writing, signed by the primary exporter, and include information specified in 40 CFR 262.53. U.S. notifiers, must at least 45 days prior to commencement of a transfrontier movement (subject to 40 CFR Part 262 Subpart H), provide written notification to EPA's Office of Enforcement and Compliance Assurance as specified in 40 CFR 262.83. In addition, the information required in 40 CFR 262.83(e) must be provided to EPA at least 10 days in advance of commencing shipment to a pre-approved facility. 40 CFR 262.84(e) requires that within 3 working days of the receipt of imports, the owner or operator of the U.S. recovery facility must send signed copies of the tracking document to the notifier, and to EPA's Office of Enforcement and Compliance Assurance. In accordance with 40 CFR 264.12 and 265.12, owners and operators of TSDFs that have arranged to receive hazardous waste from a foreign source must notify the appropriate EPA Regional Administrator at least 4 weeks in advance of the date the hazardous waste is expected to arrive at the facility. Notification must be given within 90 days of the location of any new storage unit used to store waste military munitions for which exemption is claimed under 266.205(a)(1).

Table IV-3: Major RCRA Reporting and Recordkeeping Requirements (continued)

RCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Recordkeeping	262.40; 262.54; 262.57; 262.87; 264.1(g)(8)(iv); 264.15(d); 264.56(j); 264.73; 265.1(c);(1)(iv); 265.73; 266.202(d); 266.203(c); 266.205(a)(vi); 270.1(c)(3)(iii); 280.11: 280.20; 280.31; 280.33; 280.34; 280.45; 280.74	Records for any testing of waste and records of manifests must be kept for 3 years. Operating logs and records must be kept by each TSDF, and groundwater must be monitored. 40 CFR 264.56(j) requires owners and operators of TSDFs to note in the operating record the time, date, and details of any incident that requires implementing a contingency plan. Primary exporters must keep copies of notifications of intent to export, EPA acknowledgment of consent or confirmation of delivery of hazardous waste from the consignee or exception report, consent from competent authority of foreign country, and annual reports. Primary exporters also must comply with certain manifest requirements specified in 20 CFR 262.54. Records of all emergency response activities involving military munitions must be retained for 3 years. If fired munitions land off-range and are not rendered safe and/or retrieved, records of the event must be kept for as long as any threat remains. The following records must be kept for transport of military munitions: Government Bill of Lading (GSA Standard Form 1109); Requisition Tracking Form (DD Form 1348); the Signature and Talley Record (DD Form 1907); Special Instructions for Motor Vehicle Drivers (DD Form 836); the Motor Vehicle Inspection Report (DD Form 626). Additionally, facilities must inventory waste military munitions at least annually, and must inspect quarterly for compliance with exemption requirements under 266.205 (a)(1). Inspection records must be maintained for 3 years.

Table IV-4: Major CERCLA Reporting and Recordkeeping Requirements

CERCLA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Reporting Requirements	300.405(a)(3); Also see 42 U.S.C. 9604 (e) See 42 U.S.C. 9603 (d)	EPA may require any person to furnish information on a release or threatened release of contamination, and may require reporting as specified in interagency agreements or other enforcement documents.
Notification and Reports of Problems and Emergencies	117.21; 300.125; 300.300; 300.405; 302.6 See 42 U.S.C. 9603 (a)	A person in charge of a vessel or facility must notify the National Response Center as soon as he or she has knowledge of a release that is in excess of the reportable quantity regulation (i.e., 40 CFR Part 302).
Non-Emergency Notification	See 42 U.S.C. 9603 (c)	Any present or former generator or transporter of hazardous waste must notify EPA of all facilities that accepted hazardous waste for TSDF.
Recordkeeping	See 42 U.S.C. 9603 (d) (2)	Records must be kept for 50 years by every TSDF.

Table IV-5: Major EPCRA Reporting and Recordkeeping Requirements

EPCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Emergency Planning	355.30(b); 355.30(c); 355.30(d)	Facilities that have more than a threshold planning quantity (TPQ) of an extremely hazardous substance (EHS) present at the facility must notify the State Emergency Response Commission (SERC) within 60 days of becoming subject to the EPCRA emergency planning requirements. Facilities that have more than a TPQ of an EHS present at the facility must notify the Local Emergency Planning Committee (LEPC) or the facility emergency coordinator. Facilities that have more than a TPQ of an EHS present at the facility must inform the LEPC of any changes occurring at the facility that may affect emergency planning and, upon request, provide any information necessary for the development or implementation of the local emergency response plan.
Emergency Release Notification	355.40(b); 355.40(b)	Facilities must immediately notify the SERC and LEPC of releases of EHSs or CERCLA hazardous substances that exceed a reportable quantity within a 24-hour period. Facilities must provide a written follow-up emergency notice to the SERC and LEPC as soon as practicable after a reportable release.
Hazardous Chemical Inventory Reporting - Material Safety Data Sheet (MSDS) Reporting	370.21(a); 370.21(b), (d)	Facilities must submit an MSDS for each Occupational Safety and Health Act (OSHA) hazardous chemical present at the facility in amounts greater than 10,000 pounds to the SERC, LEPC, and local fire department. Similar notification is required for each EHS present at the facility in amounts greater than the TPQ or 500 pounds, whichever is lower. In lieu of the submission of an MSDS, facilities may submit a list of the hazardous chemicals and EHSs grouped by hazard category. If a list is submitted, the facility must submit a copy of the MSDS for any chemical on the list upon request of the SERC or LEPC.

Table IV-5: Major EPCRA Reporting and Recordkeeping Requirements (continued)

EPCRA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Hazardous Chemical Inventory Reporting - Tier I/II Form	370.25 (a), (b); 370.25(d)	Facilities must submit a Tier I or Tier II form for each OSHA hazardous chemical present at the facility in amounts greater than 10,000 pounds to the SERC, LEPC, and local fire department. Similar notification is required for each EHS present at the facility in amounts greater than the TPQ or 500 pounds, whichever is lower. Facilities that have submitted a Tier I or Tier II form must, upon request, allow on-site inspection of the facility by the local fire department and provide the department with specific location information on hazardous chemicals and EHSs at the facility.
Toxic Chemical Release Inventory (TRI) Reporting	372.30; 372.27	Facilities within certain standard industrial codes and Federal facilities with 10 or more full-time employees, who manufacture (including import), process, or otherwise use a listed toxic chemical in excess of the applicable thresholds must submit a TRI Form R annually (by July 1) to EPA and the State. Facilities that have an annual reporting amount of less than 500 pounds and who manufacture, process, or otherwise use less than 1 million pounds, may submit a TRI Form A in lieu of the TRI Form R.
Recordkeeping	372.10	There are no recordkeeping requirements for the emergency planning, emergency notification, and the hazardous chemical inventory reporting requirements. Facilities must retain each TRI Form R and Form A submission and all supporting materials and documentation for a period of 3 years.

Table IV-6: Major OPA Reporting and Recordkeeping Requirements

OPA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Facility Response Plans	112.20(a)	The owner or operator of any non-transportation related on-shore facility that, because of its location, could reasonably be expected to cause harm to the environment by discharging oil into or on navigable waters or adjoining shorelines shall submit a facility response plan to the EPA Regional Administrator. A copy of the facility response is required to be kept on-site.
Spill Prevention, Control, and Countermeasures (SPCC) Plan	112.1-112.7	SPCC plans are required for facilities that have an aboveground total storage capacity for oil of 1,320 gallons or have single aboveground tanks with a storage capacity of 660 gallons or more. SPCC plans also are required for facilities that have underground storage tanks of 42,000 gallons that have the potential to contaminate navigable waters. SPCC plans are required to be kept on-site. Additionally, owners or operators of mobile or portable facilities meeting the storage capacity criteria discussed above, such as portable fueling facilities, must prepare and implement SPCC plans. No mobile or portable facility should be operated without an approved SPCC plan.

Table IV-7: Major TSCA Reporting and Recordkeeping Requirements

TSCA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Annual Document Records/Logs	761.180(a); 761.180(b)	Facilities must develop and maintain annual polychlorinated biphenyls (PCB) records and a written annual document log that contains information on the disposition of PCB items. These records must be maintained for 3 years.
Annual Reports	704.11; 761.180(b)	A facility that manufactures, imports, or processes specific chemicals referenced in this regulation must submit annual reports to the EPA concerning quantity, usage, and hazards of chemicals and maintain all associated records for at least 3 years. Commercial storage and disposal facilities are required to submit a PCB annual report.
Health and Safety Studies	716	Manufacturers (including importers), processors, and distributors of a chemical substance or mixture listed under 40 CFR 40 Part 716 are required to submit to EPA lists and copies of unpublished health and safety studies of the chemicals.
Notification and Reports of Problems and Emergencies	761.30(a)(1)(xi)	If a PCB transformer is involved in a fire-related incident, the owner must immediately report the incident to the National Response Center.
Non-Emergency Notification	716.30; 761.215(b)	EPA must be provided with all unpublished health and safety studies completed on a substance or mixture listed in this regulation that the facility has or is proposing to manufacture, import, or process. Exception reports must be filed by the facility and maintained for 3 years when PCB waste manifests are not returned to the facility within 45 days.
Preliminary Assessment Information Reporting (PAIR)	712	Producers and importers of a chemical substance or mixture listed in 40 CFR 712 are required to submit to EPA certain specified production, importation, and exposure information.

Table IV-7: Major TSCA Reporting and Recordkeeping Requirements (continued)

TSCA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Recordkeeping	761.30 (a)(1)(vi); 761.30(a)(1)(xii); 761.209(a); 761.209(c); 761.215(a); 761.218; 717.15	The following PCB records must be kept for 3 years: documentation that all PCB transformers are registered with the local fire response personnel; PCB transformer inspection and maintenance records; copies of signed manifests; correspondence documenting the facility's efforts to locate PCB wastes if the facility did not receive a signed copy of the manifest within 35 days; and a Certificate of Disposal for each completed shipment of manifested PCB waste. Additionally, agencies must maintain records of significant adverse reactions alleged to have been caused by chemical substances or mixtures manufactured or processed at the facility for 30 years.
Reports of Allegations of Significant Adverse Health and/or Environmental Reactions to Chemicals or Mixtures	717	Chemical manufacturers and certain processors are required to maintain and, when requested, report to EPA "allegations" of significant adverse health and/or environmental reactions to TSCA-subject chemicals or mixtures. Records of such allegations must be retained for 30 years (in the case of allegations regarding employee health) or 5 years (in the case of all other types of allegations).

Table IV-8: Major PPA Reporting and Recordkeeping Requirements

PPA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Annual Reports	42 U.S.C. §13106	Facilities required to report releases to EPA for the Toxic Chemical Release Inventory must also provide information on pollution prevention and recycling for each facility and for each toxic chemical. The information includes the quantities of each toxic chemical entering the waste stream and the percentage change from the previous year, the quantities recycled and percentage change from the previous year, source reduction practices, and changes in production from the previous year.

Table IV-9: Major SDWA Reporting and Recordkeeping Requirements

SDWA Reporting and Recordkeeping Requirements	Regulations [40 CFR …]	Summary
Reporting Requirements	141.31(a); 141.31(e); 141.75	Facilities must report to the State results of any test measurements or analyses. Upon request, water supply systems must submit copies of any relevant records or documents. A water supply system that uses a surface water source or a groundwater source under the direct influence of surface water must provide water quality information to the State monthly.
Notification and Reports of Problems and Emergencies	141.31(b); 141.32; 141.31(d)	Facilities must report to the State within 48 hours the failure to comply with any national primary drinking water regulation. Additionally, in the event of a violation or granting of a variance or exemption from regulatory requirements, persons served by the water supply system must be notified and copies of each type of notice must be submitted to the State.
Recordkeeping	141.33; 141.91; 144.25; 144.17	Records of bacteriological analyses must be kept for 5 years; records of chemical analyses and sanitary sewer surveys must be kept for 10 years; records of corrective actions concerning regulatory noncompliance issues (e.g., maximum contaminant levels are exceeded) must be kept for 3 years; and records concerning a variance or exemption granted to the system must be kept for 5 years after the expiration of the variance or exemption. If lead or copper Action Levels are exceeded, records of all sampling data and analyses, reports, surveys, letters, evaluations, and schedules or State determinations must be kept for 12 years. Additionally, the owner or operator of any underground injection well (UIC) may be required to obtain a permit, maintain records, make reports, conduct monitoring, and provide other information to determine whether the owner or operator has acted or is acting in compliance with the SDWA.

D. FEDERAL FACILITY INSPECTIONS

On-site inspections are the primary method used by EPA and the States to determine whether a facility is in compliance with environmental laws and regulations. Tribal governments also may be involved in inspections. The major pollution control statutes and Executive Order (E.O.) 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*, provide broad authority for EPA and delegated/authorized States to enter facilities to gather information, including review of books and records. Activities that EPA and the States may conduct include collecting monitoring data, reviewing and copying records, inspecting equipment, reviewing methods of facility operations, and obtaining samples. CAA, for example, allows EPA and the States to inspect the records or premises of a facility that manufactures new motor vehicles, engines, or engine parts or components. Also, under RCRA, any information relating to hazardous waste must be available for inspection at all reasonable times and every permitted treatment, storage, and disposal facility must be inspected every year. Tables IV-10 through IV-17 on the following pages set out EPA's and delegated/authorized States' broad authorities to conduct inspections at facilities that are subject to CAA, CWA, RCRA, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), TSCA, SDWA, EPCRA, and OPA requirements.

EPA Regional Federal Facility Coordinators (FFCs), media program office staff, and the States work together to plan and conduct inspections. Coordination between FFCs, EPA media program offices, and the States is critical in determining which facilities will be inspected, the types of inspections best suited for a facility, when the inspections should occur, and who will conduct the inspections. This coordination of inspections is discussed in more detail below. Also discussed below are the types of inspections and inspection procedures applicable to facilities that require security clearances.

Federal facilities may conduct additional self-monitoring through internal environmental management activities, including environmental auditing. When Federal agencies discover significant violations through an environmental audit, EPA recommends that they submit their related audit findings and remedial action plans to the EPA Regional Office and/or State agency even when not specifically required to do so. Section E of this chapter discusses auditing.

1. Types of Inspections

There are four different types of environmental compliance inspections conducted at Federal facilities: 1) single media, 2) single media with checklists for other programs, 3) inspections covering several media, and 4) comprehensive multimedia inspections. Single media inspections with checklists for other programs involve inspectors screening the facility for possible violations in other areas. Inspections covering several media include a coordinated inspection of several different program areas. Comprehensive multimedia inspections are conducted by a team representing each of the various media programs at the same time. Multimedia inspections are discussed in detail below. Further information on these four types of inspections can be found in the *NEIC [National Enforcement Investigations Center] Multimedia Investigations Manual*, EPA-330/9-89-003-R (March 1992).

2. Multimedia Inspections

The Federal Facilities Multimedia Enforcement/Compliance Initiative (FMECI) was a 2-year initiative designed to assess the compliance status of Federal facilities with environmental laws using a multimedia approach. EPA established the FMECI as a priority for FY 1993–1994, recognizing that Federal facilities are a highly visible sector of the regulated community and have historically demonstrated lower rates of compliance with environmental laws than their private sector counterparts. It also provided EPA an opportunity to pilot multimedia compliance and enforcement approaches within one sector of the regulated community (i.e., Federal facilities). The goals of the FMECI were to:

< Reduce environmental risks posed by Federal facilities;

< Improve Federal agency compliance with, and awareness of, environmental laws and regulations;

< Apply a comprehensive inspection program using multimedia enforcement authorities and resources; and

< Expand the application of pollution prevention to compliance problems so that Federal facilities can exceed baseline compliance.

In targeting facilities to receive multimedia inspections, EPA's Regions used several criteria including compliance history, risk ranking, environmental justice, opportunity for pollution prevention, and alignment with other national/regional/State initiatives. These criteria are adjusted by the individual EPA Regions to account for region-specific factors. Although the FMECI initiative has been completed, multimedia inspections continue to be part of EPA's base program for oversight of Federal facilities. Each EPA Region maintains an annual commitment to complete multimedia inspections of Federal facilities with EPA Headquarters. For more information on the multimedia enforcement/compliance program consult *EPA's FY 98/99 Guidance for Federal Multimedia Enforcement/Compliance Program (FMECP).* The inspections authorized under CAA, CWA, RCRA, FIFRA, TSCA, SDWA, EPCRA, and OPA are listed in the tables below.

EPA's *Revised Compliance Monitoring Strategy* (CMS), dated March 29, 1991, lays the foundation for EPA Regions and States to develop Inspection Plans that satisfy the objectives of both Federal and State air compliance programs. States should develop Inspection Plans in accordance with the CMS and coordinate with the Regions. Section VI of the CMS discusses the roles and responsibilities of EPA and the States in developing Inspection Plans. In addition, Appendix 1 of the CMS lists the information that an Inspection Plan should include. In summary, this includes 1) a list of sources to be inspected, 2) how the list of sources was determined, and 3) estimated resource allocation. For more information on Inspection Plan requirements, see Section IV and Appendix 1 of the CMS. Also, Appendix 5 of the CMS contains EPA's March 1980 *Inspection Frequency Guidance* (IFG). In accordance with the CMS, States and EPA Regions may use the IFG as an interim method to determine inspection commitments. The IFG does not incorporate the ranking criteria (i.e., environmental significance, compliance history) necessary for satisfying the objectives

of the CMS and is not encouraged as a long-term ranking method. Temporary guidelines for CAA inspections are presented in the table below.

Table IV-10: Types of Inspections at Federal Facilities Under CAA

CAA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
Class A1 State Implementation Plan (SIP) sources	Annually	Level II - Minimally acceptable State or local compliance inspection
Class A1 SIP sources that operate seasonally (not more than 90 days per year) that are excepted from annual inspection requirements	Once every 5 years	Level II - Minimally acceptable State or local compliance inspection
Class A1 SIP gas-fired combustion facilities that are excepted from annual inspection requirements	Once every 5 years	Level II - Minimally acceptable State or local compliance inspection
Class A1 New Source Performance Standards (NSPS) and Prevention of Significant Deterioration (PSD) gas turbines regulated only for nitrous oxide (No_x) emissions that are excepted from annual inspection requirements	Once every 5 years	Level II - Minimally acceptable State or local compliance inspection
Oil-fired or coal-fired industrial boilers which are Class A1 only because of sulfur dioxide emissions and which can operate in compliance with the sulfur dioxide emission limitations without either controls or use of low sulfur fuel, and are excepted from annual inspection requirements	Once every 5 years	Level II - Minimally acceptable State or local compliance inspection
Class A2 SIP sources	Biennially	Level II - Minimally acceptable State or local compliance inspection
NSPS sources which are Class A1 in size	Annually	Level II - Minimally acceptable State or local compliance inspection
NSPS sources which are not Class A1 in size	Biennially	Level II - Minimally acceptable State or local compliance inspection
NESHAPs sources (all nontransitory NESHAP-subject sources)	Annually	Level II - Minimally acceptable State or local compliance inspection

Note: A minimally acceptable State or local compliance inspection is an on-site visit to the operating source to assess compliance with at least applicable Federal air pollution control requirements. With respect to the Class A2 SIP source biennial inspection requirement, States may propose a modified inspection scheme to its EPA Regional office which presents at least the same level of resource commitment but which the State believes is more responsive to the needs of its air quality program. Also, with respect to conducting periodic on-site inspections, States may use continuous emission monitoring Excess Emission Reporting (EER) on a quarterly basis in lieu of periodic inspection requirements. An EER is a suitable alternative to an on-site inspection if EER data from the source is at least equivalent to the information that could be obtained from a minimally acceptable inspection. For more information on inspection requirements, see EPA's *Inspection Frequency Guidance* (issued March 1980) and the *Revised Compliance Monitoring Strategy* (issued March 29, 1991).

Table IV-11: Types of Inspections at Federal Facilities Under CWA

CWA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
NPDES: Major	Once a year	Compliance sampling Compliance evaluation Performance audit Toxic
NPDES: Minor	As resources allow	Compliance sampling Compliance evaluation Performance audit Toxic

Table IV-12: Types of Inspections at Federal Facilities Under RCRA

RCRA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
TSDFs	Once a year	Compliance evaluation inspection for groundwater, record review, and site inspection
TSDFs	Once every 3 years	Comprehensive groundwater monitoring evaluation
TSDFs: Solid/Hazardous Waste Management Units (SWMU)	Through permitting or closure	Identification of SWMUs or determination of releases through RCRA Facility Assessments and, if needed, through corrective action
Generators and Transporters	Based on State and EPA priorities	Recordkeeping and reporting requirements, inspections and sampling, coordination with the Department of Transportation for inspections
Facilities containing USTs	Based on State and EPA priorities	Recordkeeping and reporting requirements

Table IV-13: Types of Inspections at Federal Facilities Under FIFRA

FIFRA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
Production sites Use inspections Distributor/dealer inspections	Based on State priorities	"Establishment" inspection Compliance inspection
All regulated facilities	Response to complaints	Compliance inspection
Laboratories	Once every 2–3 years	Data audits (Federal inspections only) Good laboratory practices (GLP) compliance inspection

Table IV-14: Types of Inspections at Federal Facilities Under TSCA

TSCA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
Laboratories	Once every 2–3 years	Data audits
Facilities with PCBs and asbestos subject to TSCA §§4, 5, 6, 8, 12(b), and 13	As needed	Compliance inspections (Federal inspections only)
Producers, importers, and users of new or regulated chemicals	As needed	Recordkeeping and reporting requirements
Facilities undergoing lead (Pb) abatement activities	As needed	Compliance inspection

Table IV-15: Types of Inspections at Federal Facilities Under SDWA

SDWA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
Public Water Supply System (PWSS): All community water systems	Negotiated State/ EPA number per year, or based on a Sanitary Survey Plan completed by the State*	Sanitary survey and compliance/ engineering inspections

Table IV-15: Types of Inspections at Federal Facilities Under SDWA (continued)

SDWA INSPECTIONS (continued)		
Type of Facility	**Frequency**	**Type of Inspection**
Underground Injection Control (UIC): Class I wells	Once a year	Witness all Mechanical Integrity Tests (MITs), corrective actions, and pluggings
Class II wells	Response to complaint or witness MIT	Routine inspection with 25 percent of MITs to be witnessed
Class III wells	Generally annual	Routine with 25 percent MITs
Class V wells	When found or suspected of polluting underground sources of drinking water	Routine inspections
Class V wells	Once a year	MITs (if required)

*See EPA/State Joint Guidance on Sanitary Surveys, December 21, 1995. Also, since May 1985, RCRA has specifically prohibited the use of Class IV wells (wells injecting hazardous wastes into or above a formation with an underground source of drinking water).

Table IV-16: Types of Inspections at Federal Facilities Under EPCRA

EPCRA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
Facilities that have more than a TPQ of an EHS on-site	Discretionary	Compliance evaluation - routine or random
Facilities that have the potential to release more than a Reportable Quantity (RQ) of an EHS or CERCLA hazardous substance	Discretionary	Compliance evaluation - routine or random
Facilities that have more than 10,000 pounds of an OSHA hazardous chemical on-site	Discretionary	Compliance evaluation - routine or random
Facilities within certain Standard Industrial Classification (SIC) codes and Federal facilities with 10 or more full-time employees, who manufacture (including import), process, or otherwise use a listed toxic chemical in excess of the applicable thresholds	Discretionary	Compliance evaluation - routine or random

Table IV-17: Types of Inspections at Federal Facilities Under OPA

OPA INSPECTIONS		
Type of Facility	**Frequency**	**Type of Inspection**
Non-transportation related facilities that are reasonably expected to discharge harmful quantities of oil into navigable waters and have an underground storage capacity greater than 42,000 gallons, or an above ground storage capacity greater than 1,320 gallons in total (or 660 gallons in a single tank)	Discretionary	Compliance evaluation - routine or random

Note: OPA §4202 amends §311 of the CWA and requires owners or operators to prepare and submit a facility response plan for responding to a worst-case oil discharge or a threat of such a discharge.

3. Coordinating Inspections with the Regions

Regional FFCs work with media program offices to review proposed Regional and State inspection plans to ensure that Federal facilities are being inspected as often as required. Regional FFCs also discuss with each of the program offices their plans for oversight inspections of Federal facilities where media programs are delegated to the States. FFCs participate in selected media program oversight inspections of Federal facilities to the extent resources and travel funds permit. Factors considered in targeting inspections at Federal facilities may include:

< The significance of violations identified in the past for a particular source or category of sources;

< The extent to which patterns of noncompliance have been identified at certain Federal facilities or within Federal agencies;

< Risk to human health or the environment because of noncompliance;

< Environmental justice;

< National and Regional program priorities; and

< Tips and complaints.

4. Coordinating Inspections with States, Tribes, and Local Agencies

Since most EPA environmental programs are delegated/authorized to the States, the State and local agencies, where applicable, have the primary responsibility for conducting inspections, including those done at Federal facilities. Tribal governments also may be involved in coordinating inspections. On an annual basis, EPA and the States agree on the number of sources that will be

inspected through State/EPA enforcement agreements. These agreements are based primarily on numbers of major sources, but States generally conduct many more inspections of minor sources. It is important that States inform EPA of any State inspections of minor Federal facility sources so that EPA can develop an accurate picture of Federal facilities' compliance status and provide technical assistance, as appropriate.

State and local governmental organizations are required to administer the majority of EPCRA requirements by receiving reports and notifications, planning for emergencies, and providing the public with access to submitted information. To support these requirements, all inspections of Federal facilities will be coordinated, and results will be made available to the State Emergency Response Commission, the Local Emergency Planning Committee, and existing local fire departments, as appropriate.

5. Access to Facilities Requiring Security Clearances

Certain facilities, including those with military, intelligence, nuclear-related, and law enforcement functions, have special security or access requirements necessitated by the facility's mission. It is EPA's policy to meet these special requirements to the maximum extent possible because these requirements generally do not conflict with the goals of EPA's environmental compliance responsibilities. Where necessary, EPA or State inspectors must obtain the appropriate clearances for access to national security information, facilities, or restricted data at Federal facilities. Where information has been classified, restricted, or protected for national security, law enforcement, or other similar reasons, all such information is to be maintained in accordance with the originating agency's requirements.

EPA has programs for personnel security, document security, and protection of confidential business information. Protection of information from release has not adversely affected EPA's mission to date, and EPA staff with these responsibilities can provide assistance to inspection and compliance personnel in meeting these special access or security requirements if such access is allowed by the specific statute. EPA personnel in need of security clearances for inspections or other compliance monitoring activities should contact the Personnel Security Staff at EPA Headquarters to obtain information on how to obtain necessary security clearances. State personnel should first contact the Federal agency. If problems or inordinate delays are encountered, they should ask their supervisor for assistance. The inspector's supervisor may seek assistance from others, including the FFC.

6. State Audit Privilege/Immunity Laws and Legislation

Many States have enacted or have pending before their legislatures audit privilege/immunity laws. EPA opposes these laws because they often conflict with Federal delegation requirements and result in limited access to evidence of civil violations or criminal misconduct. Federal facilities (including facilities operated by contractors) should not rely on State environmental audit laws to conceal information obtained through an environmental audit or to claim immunity for environmental violations discovered and disclosed through an audit. EPA encourages Federal agencies to take all steps necessary, including issuance of policies and directives, to ensure that no component of a Federal department or agency, including a contract operator at a Federal facility, claims a privilege or immunity under a State environmental audit privilege or immunity statute. Because no audit

privilege exists between and among Executive Branch departments and agencies, a Federal entity cannot claim a privilege under a State audit privilege law to withhold information from EPA or any other Federal enforcement agency. For more information on State audit privilege/immunity laws, see the November 10, 1997, EPA Office of Planning and Policy Analysis memorandum titled *State Audit Privilege/Immunity Laws and Legislation.*

E. SELF-MONITORING THROUGH ENVIRONMENTAL COMPLIANCE AND MANAGEMENT AUDITING

EPA defines an environmental compliance audit as a systematic, documented, periodic, and objective review of facility operations and practices related to meeting environmental compliance. Audits are a critical component of an agency's ongoing environmental management program because they:

< Verify compliance with applicable statutes and regulations;

< Evaluate the effectiveness of environmental management systems already in place; and

< Identify unregulated potential risk at a facility.

EPA policy encourages all Federal agencies to adopt auditing programs to achieve and maintain compliance. FFEO provides technical assistance to help Federal agencies design and initiate audit programs. The following sections discuss EPA's audit policy, guidance documents, and the procedures for conducting an audit.

1. Reasons for Conducting Audits

As part of the Agency's obligation under E.O. 12088, *Federal Compliance with Pollution Control Standards*, to provide technical advice to other Federal agencies, EPA issued the *Environmental Auditing Policy Statement*, 51 FR 25004 (July 9, 1986) and a *Restatement of Policies Related to Environmental Auditing,* 59 FR 8455 (July 28, 1994), which, among other topics, specifically address auditing at Federal facilities. These policies encourage all Federal agencies to develop auditing systems to ensure the adequacy of internal systems designed to achieve, maintain, and monitor compliance with environmental laws and regulations. Audit programs should be structured to identify environmental problems promptly and expeditiously develop schedules for corrective action.

In December 1995, EPA issued an ambitious new auditing policy, *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 60 FR 66706 (December 22, 1995) that establishes Federal agency incentives for auditing Federal facilities. These incentives include a penalty incentive for self-monitoring, disclosure, and correction. The goal of the *Audit Policy* is to encourage regulated entities to voluntarily discover, disclose, and correct violations of environmental requirements. Under the 1995 *Audit Policy*, EPA will not seek gravity-based penalties or recommend that criminal charges be brought for violations that are discovered through an environmental audit or a management system reflecting "due diligence." The 1995 *Audit Policy* covers only violations that are promptly disclosed and corrected, provided that other important

safeguards are met. These safeguards protect health and the environment by precluding penalty reductions for violations that cause serious environmental harm or may have presented an imminent and substantial endangerment, for example. Conditions that must be met for EPA not to seek or reuse gravity-based penalties are listed in the adjacent box.

CONDITIONS THAT MUST BE MET FOR EPA NOT TO SEEK (OR TO REDUCE) GRAVITY-BASED PENALTIES

- Discovery of the Violation through an Environmental Audit or Due Diligence;
- Voluntary Discovery and Prompt Disclosure;
- Discovery and Disclosure Independent of Government or Third-Party Plaintiff;
- Correction and Remediation;
- Prevention of Recurrence;
- No Repeat Violations;
- Other Violations Excluded; and
- Cooperation.

In January 1997, EPA issued an update and guidance to the 1995 *Audit Policy*. The update, *EPA Audit Policy Update* (EPA 300-N-97-001), contains data indicating that the *Audit Policy* is having the desired effect. The guidance was issued to increase further the regulated community's use of the 1995 policy by clarifying legal and policy issues that have arisen during implementation. In addition, on January 15, 1997, EPA issued the *Audit Policy Interpretative Guidance* (referred to as the *Interpretative Guidance*) to aid both the government and the regulated community in implementing the *Audit Policy*. The *Interpretative Guidance* uses a question and answer format to describe EPA's position on numerous issues, including when repeat violations bar penalty mitigation and how EPA defines when a violation may have been discovered.

2. Guidance Documents and General Procedures for Conducting an Audit

EPA has issued two guidance documents to assist Federal agencies in developing effective auditing programs. The first, *Environmental Audit Program Design Guidelines for Federal Agencies* (EPA 300-B-96-011), also referred to as the *Design Guidelines*, was revised and issued by EPA to focus on the development of strong environmental auditing programs. Its companion document, *Generic Protocol for Conducting Environmental Audits of Federal Facilities*, *Volumes I and II* (EPA 300-B-96-012A and EPA 300-B-96-012B), was revised and issued in December 1996 and is referred to as the *Generic Protocol*.

The purpose of the *Design Guidelines* is to provide information, criteria, and direction to Federal agencies that are designing audit programs. The *Design Guidelines* addresses concerns and considerations unique to Federal agencies, including organizational structures, chain of command issues, and planning and budgeting systems. Although each Federal agency conducts its audits differently, EPA's *Design Guidelines* states that the following general issues should be examined before instituting or upgrading an audit program:

- Identifying the program's needs and objectives;
- Developing an audit framework that addresses scope, protocol development, audit team structure, and frequency of audits;

< Integrating the audits with an environmental management program;

< Developing program organization and funding;

< Reporting the results of the audits;

< Assigning priorities to audit findings;

< Instituting an audit finding tracking system;

< Providing for follow-up audits; and

< Evaluating the audit program in terms of technical performance, program component integrity, and environmental compliance results.

The *Generic Protocol* is the companion volume to *Design Guidelines* and was developed to assist Federal agencies in conducting environmental audits and environmental management assessments at their facilities. The *Generic Protocol* consists of a set of narrative instructions, source lists, and checklists of Federal environmental regulations for environmental issues encountered at Federal facilities. The *Generic Protocol* focuses on critical areas of an environmental audit including air, hazardous waste, underground storage tanks, emergency planning and community right-to-know, cultural resources, and environmental management systems. The *Generic Protocol* provides detailed step-by-step instructions for conducting an audit that agencies may modify to meet the individual needs and operations of their facilities.

The *Generic Protocol,* presented in two volumes, contains instructions for use of all three auditing sections or "phases." Volume I includes Phase I of the protocol, which provides a focus on compliance with Federal environmental requirements. Volume II contains Phases 2 and 3 of the *Generic Protocol*, which detail procedures for conducting environmental management system audits of both facility-specific programs and the overall programs managed at the agency's headquarters. The purpose of these three audit phases is outlined in the box below.

THREE PHASES OF THE GENERIC AUDIT PROTOCOL FOR FEDERAL FACILITIES

Phase 1 - Auditing for Compliance: Provides for a review of facility conditions with regard to specific media areas (e.g., air, water, and solid and hazardous waste) with a focus on compliance with Federal environmental requirements.

Phase 2 - Assessing Management Effectiveness of Specific Environmental Programs: Examines crosscutting issues and approaches, such as pollution prevention and eight different organizational disciplines, that help foster success in the technical management areas outlined in Phase 1.

Phase 3 - Auditing for Management Effectiveness of All Environmental Programs at a Facility Site: Examines the facility's management of all environmental programs to help establish compliance as the "starting point" rather than the "goal" of environmental performance.

F. ENVIRONMENTAL MANAGEMENT

1. Code of Environmental Management Principles

The Code of Environmental Management Principles (CEMP) for Federal agencies, developed by EPA as required by §4-405 of E.O. 12856, is a collection of five broad principles and underlying performance objectives that provide a basis for Federal agencies to move toward responsible environmental management. The CEMP principles were issued and published in the Federal Register on October 16, 1996 (16 FR 54062). EPA requested Federal agencies to provide a written statement declaring the agency's support for the CEMP Principles along with a concise explanation of how the agency plans to implement the CEMP at the facility level. Responses endorsing the CEMP on an agency-wide basis have been received from all Federal agencies that are covered by E.O. 12856. Adherence to the following five principles will help ensure environmental performance that is proactive, flexible, cost-effective, integrated, and sustainable:

< *Management Commitment*: The agency makes a written top-management commitment to improved environmental performance by establishing policies that emphasize pollution prevention and the need to ensure compliance with environmental requirements.

< *Compliance Assurance and Pollution Prevention*: The agency implements proactive programs that aggressively identify and address potential compliance problem areas and utilize pollution prevention approaches to correct deficiencies and improve environmental performance.

< *Enabling Systems*: The agency develops and implements the necessary measures to enable personnel to perform their functions in a manner consistent with regulatory requirements, agency environmental policies, and its overall mission.

< *Performance and Accountability*: The agency develops measures to address employee environmental performance and ensure full accountability of environmental functions.

< *Measurement and Improvement*: The agency develops and implements a program to assess progress toward meeting its environmental goals and uses the results to improve environmental performance.

For more information on CEMP, refer to the *Implementation Guide for the Code of Environmental Management Principles for Federal Agencies*, prepared by EPA and released in March 1996.

2. Environmental Management Systems

An Environmental Management System (EMS) is a systematic approach to ensuring that environmental activities are well managed in any organization. The most familiar form of an EMS is the 14001 Standard recently established by the International Organization for Standardization (ISO). Although there are standards for other EMSs, ISO 14001 is becoming widely adopted throughout the private sector in the United States and internationally. Many Federal agencies and facilities are considering its adoption as well.

The ISO 14001 Environmental Management System Standard defines environmental management systems as "that part of the overall management system which includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining the environmental policy.

EPA has developed a guide designed to help Federal managers who are considering adopting an EMS entitled *Environmental Management Systems Primer for Federal Facilities*. This guide is not intended to be a technical or detailed manual on EMS implementation. Rather, its goal is to help Federal managers understand EMSs and how one can help them improve environmental management at their facilities. This Primer also outlines the elements of an EMS, offers tips on how to make the case for an EMS to upper management, explains how an EMS will benefit an organization, and places EMSs in the context of regulations, compliance issues, pollution prevention, and other government programs.

EPA published a Position Statement on EMS and ISO 14001 (63 FR 12094, March 12, 1998). EPA supports and will help promote the development and use of EMSs, including those based on the ISO 14001 standard, that help an organization achieve its environmental obligations and broader environmental performance goals. EPA encourages the use of EMSs that focus on improved environmental performance and compliance as well as source reduction (pollution prevention) and system performance. EPA supports efforts to develop quality data on the performance of any EMS to determine the extent to which the system can help bring about improvements in these areas.

G. ENVIRONMENTAL MANAGEMENT REVIEWS

An Environmental Management Review (EMR) is a collaborative effort between EPA and a Federal facility to evaluate the facility's environmental program and management systems. An EMR is conducted to determine how well the facility has developed and implemented specific environmental management systems to ensure compliance. EMRs are voluntary and are initiated by an agency or facility. They are not compliance-driven assessments, audits, or inspections.

The Federal facility that has requested the EMR has ultimate authority in determining the scope of the review. There are seven potential areas of inquiry for an EMR, as defined in Phase 3 of the *Generic Protocol for Conducting Environmental Audits of Federal Facilities:*

< Organizational structure;

< Environmental commitment;

< Staff resources, training, and development;

< Formality of environmental program;

< Internal and external communications;

< Program evaluation, reporting, and corrective action; and

< Environmental planning and risk management.

A typical EMR may address any of these areas. An EMR may take a month or two to plan and 1 to 3 days to conduct. Once EPA evaluates the results of the EMR, the facility receives a written report or letter.

EMRs are conducted by a team of EPA Regional staff with the assistance of qualified contractors, when appropriate. Throughout the EMR process, the team will coordinate closely with Federal facility personnel. EPA Headquarters recently issued (on May 31, 1996) an interim final policy entitled *Interim Final Policy on Environmental Management Reviews at Federal Facilities*, and technical guidance, entitled *Interim Technical Guidance for Conducting EMRs at Federal Facilities*. The interim policy stipulates that EMRs will be conducted as part of a pilot program. Upon completion of the pilot, EPA intends to identify any lessons learned, modify the policy as appropriate, and implement a final EMR policy.

To obtain more information on the EMR program, Federal facilities should contact an EPA FFC or FFEO. Appendix A of this document provides the names, phone numbers, and addresses of each FFC.

The following reference materials provide more information on the EMR program and its implementation and can be obtained from FFEO.

EMR POLICIES AND GUIDANCE

Generic Protocol for Conducting Environmental Audits of Federal Facilities, Volumes I & II, EPA 300-B-96-012A & B (December 1996)

Interim Final Policy on Environmental Management Reviews at Federal Facilities (May 31, 1996)

Interim Technical Guidance for Conducting EMRs at Federal Facilities (May 31, 1996)

These documents can be obtained from Enviroene, EPA's free, public, integrated information system. Enviroene may be accessed on the World Wide Web at **http://es.epa.gov** or **http://www.epa.gov/envirosense**.

H. FEDERAL AGENCY ENVIRONMENTAL MANAGEMENT PROGRAM PLANNING: THE FEDPLAN PROCESS

Federal facility environmental planning is an important activity undertaken by Federal agencies to attain and sustain compliance with environmental requirements. Federal agencies are required by E.O. 12088, *Federal Compliance with Pollution Control Standards*, to develop environmental plans. Under E.O. 12088, Federal agencies submit environmental plans to EPA, which reviews and

analyzes the plans and then forwards the analysis to the Office of Management and Budget (OMB). The process of submitting, reviewing, and analyzing agency plans is referred to as the Federal Agency Environmental Management Program Planning Process or FEDPLAN. For more information on E.O. 12088, see Section D.1 of Chapter II and Appendix C.

1. The FEDPLAN Process

The primary objective of the FEDPLAN process, and the supporting Federal Agency Environmental Management Program Planning Process Database, commonly referred to as FEDPLAN-PC, is to provide a mechanism for characterizing environmental activities, establishing priorities, and identifying the resources needed to attain and sustain compliance with Federal, State, and local environmental requirements. This includes future requirements and correction of those violations or problems that have already been identified by EPA and State regulatory authorities. The FEDPLAN process also provides a methodology for analyzing both current and projected funding requirements. FEDPLAN-PC is a computerized database that tracks these requirements from the time they are first identified until they are executed. Updated regularly by the respective agencies, FEDPLAN-PC provides EPA with the status of each Federal agency's environmental program and the activities necessary to implement the agency's environmental plan. FEDPLAN and FEDPLAN-PC are briefly discussed in Chapter I, Section B.2. Additional uses for the FEDPLAN process are listed in the box below.

ADDITIONAL USES FOR FEDPLAN PROCESS

- Provides facility directors, installation commanders, environmental managers, and budget personnel with an important management tool in the day-to-day operations of their facilities' environmental programs;
- Provides a comprehensive inventory of all identified environmental requirements;
- Documents the backlog of currently unfunded projects for future planning purposes;
- Assists in forecasting the cost of environmental activities resulting from new statutory regulatory requirements;
- Supports the development of Federal agency program and budget documents including budget requests;
- Can be used to develop objective parameters of program performance; and
- Provides EPA with information needed for implementation of the Federal facilities compliance program, especially in the area of technical assistance.

2. Authorities

Authority for the FEDPLAN process (previously referred to as the A-106 Process) originated in OMB Circular A-106, *Reporting Requirements in Connection With the Control and Abatement of*

Environmental Pollution at Existing Federal Facilities, and OMB Circular A-11, *Preparation and Submission of Budget Estimates.* The A-106 tracking system was originally designed to track and report a small number of "brick and mortar" engineering projects conducted by Federal agencies. As the number and complexity of environmental laws and regulations grew, the number of projects also grew, making the process of conducting comprehensive reviews of environmental projects by EPA less efficient. An Interagency Task Force was convened by EPA to review and recommend improvements to the process. The FEDPLAN process and FEDPLAN-PC are the result of these recommendations. Authority for the process now rests completely in E.O. 12088, which is much broader in scope than the previous OMB circular.

E.O. 12088 makes the head of each Federal agency responsible for ensuring that the agency's facilities, programs, and activities meet applicable Federal, State, and local environmental requirements. The Order mandates that agencies meet these requirements by submitting environmental plans that include requests for sufficient funds for compliance with environmental standards. Additional EPA responsibilities include:

< Establishing guidelines for Federal agencies to use when developing their environmental plans;

< Providing technical advice and assistance during the planning process; and

< Conducting reviews and inspections to monitor compliance and to ensure the adequacy of Federal agency environmental planning.

E.O. 12088 is discussed further in Section D.1 of Chapter II and is provided in full text in Appendix C.

3. FEDPLAN-PC as a Management Information System

As a project-based management information system, FEDPLAN-PC assists environmental managers in the daily administration of their programs by:

< Characterizing environmental activities;

< Tracking, reporting, and analyzing environmental compliance data;

< Identifying resources necessary to attain and sustain compliance;

< Prioritizing current environmental project funding; and

< Projecting future environmental compliance budget plans.

FEDPLAN-PC provides the data necessary to verify that Federal agencies are adequately planning and programming for environmental compliance and to ensure that agencies request funding for all their environmental requirements. It also is used to assess progress in implementation of environmental programs at all levels of organizations.

In addition, FEDPLAN-PC contains advanced features capable of conducting multiple analyses of FEDPLAN data including report-generating capabilities that provide sophisticated ways of viewing data. Because each project that is identified by a Federal agency is represented by a unit record, reports can be generated using any combination of more than 100 different parameters.

4. Reporting FEDPLAN Data

Federal agencies submit agency plans either electronically or on an Agency FEDPLAN Input Form. EPA analyzes the data submitted by Federal agencies and provides comments in accordance with the schedule presented in Exhibit IV-1 on the following page.

As discussed in Section A.2 of Chapter I, Federal agencies that are constructing or operating facilities outside the United States are required by E.O. 12088 to ensure that such construction and operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction. The E.O. 12088 requirement that Federal agencies develop and submit environmental plans to EPA applies equally to an agency's domestic and overseas activities. Thus, Federal agencies must report both their domestic and overseas activities under FEDPLAN.

5. EPA Review of Agency Submissions

EPA's review of Federal agency plans consists of two fundamental elements: 1) examination of individual projects and 2) analysis of overall programmatic (media or multimedia) compliance with statutory and regulatory requirements. This review identifies those situations where a project is needed for compliance but is not reflected in the agency plan. The review also identifies projects that are in the plan, but need to be modified to accomplish their stated purpose. EPA Regions generally review projects and programs at Federal facilities (installation level), whereas EPA Headquarters concentrates its analysis on departmental- and bureau-level environmental programs.

The EPA Regional FFC coordinates the review of Federal agency plans within that Region. The primary function of EPA Regional reviewers is to determine whether the Federal facility environmental plan is addressing all relevant compliance issues. During a review, the plan is correlated with information in the Federal Facilities Tracking System (FFTS) database and with other regional media compliance tracking systems. If a Federal facility has signed an interagency agreement or a Federal Facility Compliance Agreement or has been subject to an enforcement action, a corrective action project may be required to bring the facility back into compliance. Reviewers check the compliance status of the facility being reviewed and ensure that all such actions have been covered in the facility's FEDPLAN submission.

If a facility requires an additional project to correct a deficiency, the Regional FFC discusses the situation with a representative at the installation and, if necessary, enters a recommendation in the Regional system that a project be added to the Federal agency plan. EPA reviewers pay particular attention to the compliance status and the priority of each project in the Federal agency plan.

All projects and activities reported in FEDPLAN must be classified according to their compliance status. EPA has established a system that sorts compliance status into 5 distinct classes and 11 different compliance categories. Placing programs in the correct compliance class is the first step

Exhibit IV-1: FEDPLAN Review Cycle

4th Quarter FY01 - 1st Quarter FY02*

Federal Agencies Update FEDPLAN Data for FY03

- EPA HQ sends call letter to Federal Agencies for FEDPLAN data for FY03
- EPA HQ provides requested training to Federal Agencies
- Federal Agencies input data into FEDPLAN
- Federal Agencies provide FEDPLAN data to EPA HQ

1st Quarter FY02 - 2nd Quarter FY02*

EPA Regions Review Agencies FEDPLAN Data

- EPA HQ provides Regions with review instructions
- EPA HQ provides Regions with requested training
- EPA HQ consolidates and QAs Agencies data and distributes to Regions for review
- EPA Regions review Agencies FEDPLAN data
- EPA HQ collects all comments from Regions

3rd Quarter FY02 - 4th Quarter FY02*

EPA Regions Review Agencies FEDPLAN Data

- EPA HQ consolidates Regions' comments into report for each Federal Agency and forwards report to Federal Agencies
- EPA HQ & Federal Agencies meet, as appropriate, to discuss comments
- Federal Agencies respond to EPA HQ comments in writing; response forwarded to EPA Regions
- EPA HQ sends summary report to OMB

4th Quarter FY02 - 1st Quarter FY03*

EPA Follow-up on Federal Agencies Plans/Commitments

- EPA Regions and HQ follow-up to ensure Federal Agencies comply with their plans and commitments
- Process begins again for FY04

* FY01-03 are example years

establishing the relative importance of a project or activity. Although compliance status alone does not establish a project's priority, this parameter is a significant factor in determining the necessity and timing of the project or activity. Class 1 projects are considered "must fund" projects. If a valid Class 1 project is included in an agency plan and no planned funding is reflected, the reviewer will enter a recommendation in the Regional system that the project be amended. All recommendations to Federal agencies' environmental project data are forwarded for appropriate action to EPA Headquarters.

6. Report to OMB

When EPA Regional and Headquarters review of Federal agency environmental plans is completed, EPA prepares a summary report for OMB. Because FEDPLAN data provides extensive detail for each of the thousands of Federal agency project plans that are annually updated and entered into the system, the report to OMB provides an overview of FEDPLAN data. The summary report profiles a range of FEDPLAN data for each Federal agency, as well as the database as a whole, including:

< Total projects;

< Fiscal information;

< Media categorization;

< Compliance status;

< New and completed projects;

< EPA review information; and

< Annual reporting trends and statistics.

EPA may provide more detailed FEDPLAN data to OMB, when appropriate, to supplement the summary data.

Prior to sending the summary report to OMB, FFEO obtains approval from the Assistant Administrator for Enforcement. At OMB's request, EPA may meet with OMB to clarify information contained in the summary report and provide additional data. EPA also may discuss with OMB any recommendations to Federal agency FEDPLAN projects that EPA views as being unresolved or insufficiently addressed.

7. EPA/Federal Agency Coordination

While EPA compiles and reviews Federal agency FEDPLAN updates once a year, FEDPLAN coordination between EPA and Federal agencies continues throughout the year. EPA provides Federal agencies with project comments electronically using the FEDPLAN-PC system. EPA also communicates directly with Federal agencies throughout the year to provide compliance assistance, and to identify and resolve data discrepancies. Most often, EPA initiates communication with a

Federal agency to discuss specific environmental projects. To facilitate this process, Federal agencies should maintain accurate and updated contact information for their facilities and projects in the FEDPLAN-PC database.

The FEDPLAN process provides two methods for EPA to review and make recommendations to Federal agency environmental plans:

< In the FEDPLAN-PC system, making recommendations to specific projects or suggesting new projects to meet compliance requirements; and

< Communicating directly with Federal agency facility and project contacts identified in the FEDPLAN-PC database.

Federal agencies are required to respond to EPA recommended projects in writing and indicate whether they agree (e.g., a project is added to address the need); or agree, but indicate that a new project is not needed because the problem is addressed under an existing project; or disagree and provide justification as to why a new recommended project is not needed. Agency response forms are provided in FEDPLAN-PC.

Some issues may simply require clarification and can be handled with a telephone call between EPA and the appropriate Federal agency contacts. EPA may, however, determine that certain issues require site visits or meetings with the responsible Federal agency contacts. This type of action may result from insufficient response to EPA recommendations or if EPA has identified a need for a compliance assistance visit.

The documents listed in the box below contain detailed information about FEDPLAN-PC and the FEDPLAN process.

IMPORTANT FEDPLAN DOCUMENTS

FEDPLAN: Federal Agency Environmental Program Planning Guidance: Establishes guidelines for the development of agency plans and provides guidance to both users and providers of information generated by the process (June 1996). Also see http://es.epa.gov/oeca/fedfac/guid.html

Federal Agency Environmental Management Program Planning: FEDPLAN-PC Agency User Guide: Provides users with instructions for installing FEDPLAN-PC, using the system for FEDPLAN updates, and submitting FEDPLAN data electronically (September 1997).

Federal Agency Environmental Management Program Planning: Data Element Dictionary: Provides definitions for each data element used in the FEDPLAN-PC (June 1996).

V. ENFORCEMENT RESPONSE TO FEDERAL FACILITY VIOLATIONS

Chapter V discusses EPA's Federal facility enforcement philosophy, summarizes key enforcement policies affecting Federal facilities, and provides an overview of enforcement authorities and the enforcement process. Also discussed is EPA's response to violations at Federal facilities operated by non-Federal parties (e.g., government-owned/contractor-operated facilities) and State/Tribal response to Federal facility violations. A chart depicting the EPA Federal facilities enforcement process is provided. In addition, an exhibit is presented that provides definitions for significant violators and significant noncompliers of environmental requirements.

EPA's Office of Enforcement and Compliance Assurance (OECA) at Headquarters and EPA's Regional offices have authority to take enforcement action against violators of environmental requirements.[3] EPA's compliance philosophy regarding Federal agencies is to ensure that Federal agencies comply with all applicable environmental requirements in the same manner and to the same extent as privately-owned facilities. To ensure that Federal agencies adhere to environmental requirements, EPA monitors Federal agency compliance, issues and negotiates compliance orders and agreements, assesses fines and penalties, and develops Federal agency enforcement and compliance policy and guidance.

EPA HAS AUTHORITY TO ASSESS FINES AND PENALTIES AGAINST FEDERAL FACILITIES UNDER ENVIRONMENTAL STATUTES INCLUDING, BUT NOT LIMITED TO:

- Clean Air Act
- Resource Conservation and Recovery Act
- Safe Drinking Water Act

In general, EPA takes a "two-pronged" approach toward responding to violations of environmental requirements at Federal facilities. The first "prong" entails using many of the same enforcement tools that EPA applies against private parties. These enforcement tools include the assessment of penalties, orders (unilateral and consensual), negotiated settlements, and informal administrative actions. Orders and compliance agreements are the primary mechanisms used for formalizing the compliance terms (e.g., corrective actions to be taken) and schedules needed to expeditiously resolve noncompliance situations at Federal facilities. Currently, EPA has explicit authority to assess fines and penalties at Federal facilities in violation of environmental statutes including, but not limited to, the Clean Air Act (CAA), Resource Conservation and Recovery Act (RCRA), and the Safe Drinking Water Act (SDWA). For detailed information on EPA's enforcement authorities under these and other environmental laws, see Section B of Chapter II.

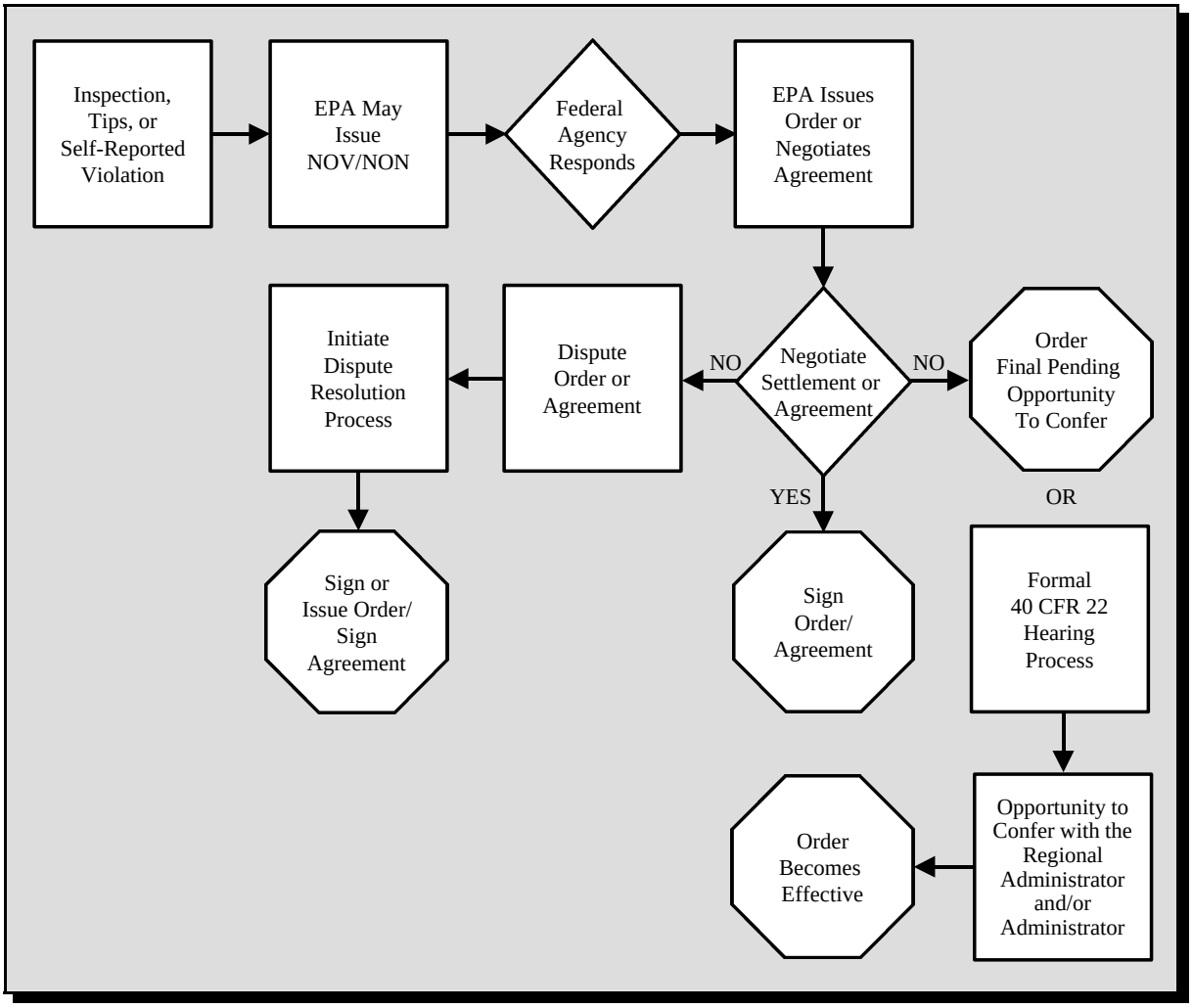
The second "prong" involves compliance assistance at Federal facilities. By offering technical advice, giving compliance seminars, or performing on-site compliance assessments, EPA can help

[3]With the exception of Section C.8, Community Involvement in Enforcement Actions and Section D.4, Contractor Listing, this chapter covers enforcement actions other than those taken under CERCLA. CERCLA enforcement actions are discussed in Section B.2 of Chapter II.

Federal agencies avoid breaking the law and bringing into action EPA formal enforcement capabilities. EPA recognizes that the best way to manage pollution is to prevent it. The same holds true for compliance—preventing violations is a goal of EPA's enforcement program.

EPA's enforcement response for Federal agencies is different from its enforcement against non-Federal parties in that it is purely administrative and, therefore, does not involve civil judicial action or assessment of civil judicial penalties. This limitation on civil judicial action does not apply to enforcement actions taken by States as authorized under various statutes nor to EPA actions directed against non-Federal operators of Federal facilities. EPA will pursue the full range of its enforcement responses against private operators of Federal facilities, including private leaseholders operating on Federal land, in appropriate circumstances. Furthermore, sanctions may be sought against individual employees of Federal agencies for criminal violations of environmental statutes. Exhibit V-1, below, presents EPA's Federal facilities enforcement process.

Exhibit V-1: EPA Federal Facilities Enforcement Process



A. EPA ENFORCEMENT POLICIES AND GUIDANCE

EPA's program and enforcement offices have developed several policy and guidance documents that specifically address Federal facilities. These policies and guidance may be statute-specific, address a particular topic (e.g., government-owned/contractor-operated facilities), or may represent general enforcement policies. Key documents containing policies and guidance affecting Federal facilities are summarized below.

1. Statute-Specific Policies and Guidance for Federal Facilities

a. *Guidance on Implementation of EPA's Penalty/Compliance Order Authority Against Federal Agencies Under the Clean Air Act (CAA)* (Office of Enforcement and Compliance Assurance, October 9, 1998)

The Clean Air Act contains several provisions authorizing EPA to assess administrative civil penalties and to issue administrative compliance orders for violations of CAA and its implementing regulations. These provisions also authorize EPA to assess administrative civil penalties or issue compliance orders against Federal agencies. On July 16, 1997, the Department of Justice (DOJ), Office of Legal Counsel, issued an opinion confirming EPA's authority to assess administrative penalties against Federal agencies under CAA, including field citations. For more information regarding the DOJ opinion, see Chapter II, Section B.2. Also, see Appendix B, which contains a copy of the opinion.

EPA's *Guidance on Implementation of EPA's Penalty/Compliance Order Authority Against Federal Agencies Under the Clean Air Act* was issued to clarify the enforcement procedures for Federal facility enforcement under CAA. The guidance supersedes earlier guidance regarding CAA enforcement at Federal facilities, such as that found in the *1988 Federal Facilities Compliance Strategy*. The 1998 guidance addresses hearing procedures and settlement, the opportunity to confer, compliance orders, waivers, penalties, and press releases.

The guidance clarifies that:

< the hearing procedures set forth at 40 CFR Part 22 apply when EPA issues a penalty order against Federal agencies in the same manner as when EPA files an administrative action against private parties;

< before a penalty becomes final, the respondent Federal agency must be afforded an opportunity to confer with the Administrator (and that the opportunity to confer requirement can typically be satisfied by providing an opportunity to confer with a Regional official);

< CAA compliance orders to Federal agencies should follow the same procedures as for the issuance of such orders to private parties;

< where the Regions determine that a waiver should be granted in an action against a Federal agency, the Regions should direct the request for a waiver to the Director, FFEO with a copy to the Director, Air Enforcement Division, Office of Regulatory Enforcement;

< upon the issuance of an order or the filing of a complaint, Regions are strongly encouraged to issue a press release; and

< Federal agencies are liable for EPA-assessed CAA civil administrative penalties just like any other person. With respect to such penalties, if violations occurred prior to July 16, 1997 and are ongoing, EPA could assess penalties for the violations from July 16, 1997 until correction of the violation.

In addition, the guidance clarifies that EPA can require correction of and, in some cases, may seek penalties for violations that occurred prior to July 16, 1997. The guidance recommends that if a Region believes that seeking penalties for violations that occurred prior to July 16, 1997 is warranted, the Region should submit a justification to the Director of the Federal Facilities Enforcement Office. For more information pertaining to the *Guidance on Implementation of EPA's Penalty/Compliance Order Authority Against Federal Agencies Under the Clean Air Act*, see Chapter II, Section B.1. Also, see Appendix B, which contains a copy of the guidance.

b. *Guidance on Process for Resolving E.O. 12856 and EPCRA Compliance Problems at Federal Facilities* (Office of Enforcement, July 30, 1997)

Executive Order (E.O.) 12856, *Federal Compliance with Right-To-Know Laws and Pollution Prevention Requirements*, requires Federal agencies to comply with the requirements contained in the Emergency Planning and Community Right-to-Know Act (EPCRA) §§301 through 313. E.O. 12856 also authorizes EPA to conduct reviews and inspections, as necessary, to monitor compliance with EPCRA requirements. The *Guidance on Process for Resolving E.O. 12856 and EPCRA Compliance Problems at Federal Facilities* encourages Federal agencies to cooperate fully with EPA's efforts to ensure compliance. The guidance states that Federal facilities are required to achieve compliance as promptly as practicable when notified of noncompliance. Because E.O. 12856 does not permit EPA to take enforcement actions as provided by EPCRA against Federal facilities, the guidance establishes a process involving both the Regional EPCRA and Federal Facility Coordinators to bring Federal facilities into compliance with EPCRA. The process established in the guidance involves an escalating response scheme including an initial compliance screening, informal notification to/response by the facility regarding its compliance status, an inspection, use of a show-cause letter requiring the facility to comply within 45 days, negotiation of a Federal Facility Compliance Agreement (if needed), and ultimately listing the facility in EPA's annual report to the President as being in violation of EPCRA and E.O. 12856, as well as entry into EPA's Integrated Data for Enforcement Analysis (IDEA) database and Quarterly Compliance Status Reports as being a violator.

c. *Final Enforcement Guidance on Implementation of the Federal Facility Compliance Act* (Office of Enforcement, July 6, 1993)

The Federal Facility Compliance Act (FFCA) of 1992 amended RCRA by authorizing EPA to issue administrative complaints and orders in response to violations. The *Final Enforcement Guidance on Implementation of the Federal Facility Compliance Act* provides guidance on the use of EPA's authority to issue compliance orders to Federal agencies pursuant to RCRA §3008(a). The guidance

clarifies that 1) Federal agencies have the same opportunity to challenge an EPA complaint using the 40 CFR Part 22 procedures, 2) settlement with a Federal agency is encouraged in the same circumstances as with a private party, 3) FFCA's "opportunity to confer" is satisfied by providing an opportunity to confer with an appropriate Regional official but due to policy the conference will be with the Administrator upon conclusion of the 40 CFR Part 22 procedures, and 4) EPA will pursue penalties only from the effective date of the FFCA forward. This guidance supersedes the *Interim Final Guidance*, dated April 15, 1993. The guidance does not cover RCRA §3008(h) actions against Federal agencies, which continue to be governed by 40 CFR Part 24.

d. *EPA Authority to Assess An Administrative Penalty Against Another Federal Agency Under RCRA Subtitle I* (Office of General Counsel, June 16, 1998)

This General Counsel opinion sets forth EPA's position that EPA can assess an administrative civil penalty against another Federal agency for violations of underground storage tank (UST) regulations issued under Subtitle I of RCRA. The memorandum concludes that under §§6001, 9001, and 9007 of RCRA, Congress has clearly stated that EPA has authority to issue another Federal agency an administrative order assessing a civil penalty for violations of UST requirements. The memorandum provides a statutory background and analysis that supports its conclusion.

e. *Hazardous Waste Civil Enforcement Response Policy* (Office of Solid Waste and Emergency Response, March 15, 1996)

The *Hazardous Waste Civil Enforcement Response Policy* or ERP is one of several documents that define the national RCRA enforcement program. The ERP provides a general framework for identifying violations and violators of concern and describes timely and appropriate enforcement responses to noncompliance. The ERP provides definitions of significant noncompliers (SNCs) and secondary violators and defines when a facility is deemed to have returned to compliance. The ERP provides guidance on the selection of an appropriate enforcement response, including enforcement responses against SNCs (formal responses) and actions against facilities not designated as a SNC (informal responses). In addition, the ERP establishes response time guidelines for formal and informal enforcement actions. The guidelines are designed to expeditiously return noncompliant facilities to compliance with all applicable requirements of the Federal RCRA program or the authorized State equivalent. The ERP also discusses EPA action in authorized States. The ERP includes a timeline for RCRA enforcement actions. Federal agencies are covered by this policy.

f. *Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996* (Office of Enforcement and Compliance Assurance, May 29, 1998)

On August 6, 1996, the Safe Drinking Water Act Amendments of 1996, Public Law 104-182 became law. Prominent among the Amendments are several provisions uniquely applicable to Federal entities. The new SDWA clarifies that Federal agencies could be subject to a penalty order for a violation of an administrative order. This guidance explains the Amendments' application to Federal entities and offers advice to Regions when exercising the enhanced SDWA authorities. Specifically addressed in the guidance are 1) administrative procedures for §1414(g), 42 U.S.C. §300g-3(g), Compliance Orders; 2) administrative procedures for §1431 Imminent and Substantial Endangerment

Orders; 3) administrative procedures, including opportunity to confer with the Administrator, for §1447(b), 42 U.S.C. §300j-6(b), penalty orders; 4) §1447(b), 42 U.S.C. §300j-6(b), penalty order settlements; 5) administrative procedures for administrative orders under the underground injection control program; 6) timing of issuance of SDWA administrative orders; and 7) press releases for SDWA enforcement actions at Federal facilities.

g. *Interim Enforcement Response Policy, Real Estate Notification and Disclosure Rule* (Office of Enforcement and Compliance Assurance, January 23, 1998)

The *Interim Enforcement Response Policy* ("Interim ERP") for the *Real Estate Notification and Disclosure Rule* ("Disclosure Rule") sets forth the appropriate EPA enforcement responses to violations under §1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and its regulations, which are codified at 40 CFR Part 745, Subpart F. The *Interim ERP* will be used to determine the enforcement response and to calculate penalties in administrative enforcement actions concerning violation of the *Disclosure Rule*.

The *Disclosure Rule* requires that sellers, lessors, and any agent must comply with certain requirements when selling or leasing target housing. The *Disclosure Rule* defines "seller" and "lessor" to include government agencies. Thus, when a Federal facility or government agency is the seller or lessor of target housing as defined in the statute and the rule, the requirements of §1018 and the *Disclosure Rule* apply to such facility or agency.

Section 1018(b)(5) makes a violation of the *Disclosure Rule* a prohibited act under §409 of TSCA and then subject to EPA enforcement authority under §16 of TSCA. Section 408 of TSCA subjects each department, agency, and instrumentality of Executive, Legislative, and Judicial branches of the Federal government to all Federal, State, interstate, and local requirements, both substantive and procedural, respecting lead-based paint, lead-based paint activities, and lead-based paint hazards. The Federal, State, interstate, and local substantive and procedural requirements referred to in §408 of TSCA include, but are not limited to, all administrative orders and all civil and administrative penalties and fines regardless of whether such penalties or fines are punitive or coercive in nature. The *Disclosure Rule* contains Federal requirements respecting lead-based paint, lead-based paint activities, and lead-based paint hazards. Therefore, Federal facilities are subject to the *Disclosure Rule* requirements.

EPA thus has express penalty authority over Federal facilities. In assessing penalties against Federal agencies, EPA will apply the *Interim ERP*. Before a penalty order becomes final, §16(a)(2) of TSCA requires the Administrator to provide the Federal agency with notice and an opportunity for a formal hearing on the record in accordance with the Administrative Procedures Act. 40 CFR Part 22 sets forth EPA's general rules of administrative practice governing the assessment of administrative penalties. The proposed Part 22 Consolidated Rules of Practice also require that before a final order of the Environmental Appeals Board issued to a Federal agency becomes effective, the head of the department, agency, or instrumentality of the United States to which the order was issued can request a conference with the Administrator (40 CFR §22.31(f)).

2. Other Enforcement Policies and Guidance

a. *EPA Enforcement Policy for GOCO Facilities* (Office of Enforcement, January 7, 1994)

The *EPA Enforcement Policy for GOCO Facilities* sets forth EPA's general policy with respect to who should apply for a permit, identification of appropriate government-owned/contractor-operated (GOCO) enforcement responses, and special considerations for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) enforcement actions. The policy states that where EPA has the authority under a given statute to initiate an enforcement action against an owner or an operator at a facility, and the contractor (or subcontractor) fits the statutory or regulatory definition of an operator, EPA may exercise its discretion to pursue enforcement against the Federal agency, the contractor-operator, or both. The policy further states that when EPA takes enforcement action against a contractor, EPA will treat the contractor the same as it treats all other private parties.

b. *Final Supplemental Environmental Projects Policy* (Office of Enforcement and Compliance Assurance, Effective May 1, 1998)

The primary purpose of the *Final Supplemental Environmental Projects (SEP) Policy* is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by the policy. The policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers. It also may be used by EPA and the Department of Justice in reviewing proposed SEPs in the settlement of citizen suits. The policy applies to Federal agencies that are liable for the payment of civil penalties.

The policy revises and supersedes the February 12, 1991, *Policy on the Use of Supplemental Environmental Projects in EPA Settlement* and the May 1995 *Interim Revised Supplemental Environmental Projects Policy*. The new 1998 policy applies to settlements of all civil judicial and administrative actions filed after the effective date of the policy (May 1, 1998), and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the specific terms of a SEP.

Major changes contained in the new SEP policy include a new section to encourage the use of community input in developing projects in appropriate cases; addition of an "other" category of acceptable projects under which worthwhile projects that do not fit within any of the defined categories may qualify as SEPs; prohibition of the use of SEPs to mitigate claims for stipulated penalties (unless a deviation from the prohibition is approved by the Assistant Administrator of OECA in certain defined extraordinary circumstances); a penalty calculation methodology that is broken into five steps rather than three; and revised legal guidelines to improve clarity and provide better guidance.

c. *Civil Monetary Penalty Policy* (Office of Enforcement and Compliance Assurance, May 19, 1997)

On May 19, 1997, the Assistant Administrator for the Office of Enforcement and Compliance Assurance issued a new penalty policy: *Modification to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (Pursuant to the Debt Collection Improvement Act of 1996)*. This penalty policy modified all existing EPA civil penalty policies to conform to the Debt Collection Improvement Act of 1996 and the new rule by increasing the gravity component for penalty calculations by 10 percent.

B. ENFORCEMENT AUTHORITIES

The major pollution control statutes provide two general mechanisms for the enforcement of environmental requirements: administrative and judicial actions. Each of these enforcement mechanisms is discussed below.

1. Administrative Actions

An administrative action is EPA's mechanism for enforcing environmental requirements at Federal facilities. Generally, the major pollution control statutes provide authority for EPA to issue orders that:

< Require compliance immediately or within a specified schedule;

< Require steps to remedy the consequences of the violation; and

< Suspend or revoke a permit required for the facility to operate.

In addition, CAA, RCRA, and SDWA also provide authority to issue penalty orders. If EPA commences an action under 40 CFR Part 22, *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits,* any person (including a Federal agency) can challenge an EPA administrative action by filing an answer to EPA's complaint with the Regional Hearing Clerk. The initial decision of a Presiding Officer or Administrative Law Judge (ALJ) shall become the final order within 45 days after its service upon parties and without further proceedings, unless an appeal is taken to the Environmental Appeals Board or the Appeals Board elects to review the initial decision. If the decision of the Presiding Officer or ALJ is appealed, the Appeals Board will issue a final order as soon as practicable after receiving appellate briefs or oral arguments, whichever is later.

a. Opportunity to Confer with the Administrator Regarding RCRA Enforcement Orders

FFCA provides that before any RCRA administrative enforcement order issued to a Federal facility becomes final, the recipient agency must have the opportunity to confer with the EPA Administrator. Therefore, following the conclusion of the hearing process through the Environmental Appeals Board, if the head of the affected agency requests a conference with the Administrator in writing and

serves a copy of the request on the parties of record within 30 days of the Environmental Appeals Board's service of the decision, the final decision will be made by the Administrator. For more information on a facility's opportunity to confer with the EPA Administrator, refer to the *Final Enforcement Guidance on Implementation of the Federal Facility Compliance Act,* issued by FFEO on July 6, 1993 and 40 CFR Part 22.37(g).

b. Opportunity to Confer with the Regions Regarding SDWA Compliance Orders

SDWA does not require EPA to provide notice and an opportunity for a public hearing before a compliance order takes effect. However, in its *Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996*, EPA states that it believes that providing a Federal agency an opportunity to confer with an appropriate Regional official who has authority to issue a §1414(g) order (for violations of the public water system requirements), a §1423 order (for violations of the underground injection control requirements), or a §1431 imminent and substantial endangerment order is warranted even in the absence of a statutory provision requiring one.[4] As specified in the guidance, when giving the Federal entity the opportunity to confer, the Regions may establish a time period in which the conference must be requested or the opportunity is waived. The guidance also states that due to the nature of §1431 orders, an opportunity to confer may be limited. For more information see the *Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996* (May 29, 1998), which is briefly described in Section A.1 of this chapter.

c. Opportunity to Confer with the Administrator Regarding SDWA §1447 Penalty Orders

Section 1447(b) of SDWA requires that before a penalty order becomes final, the Administrator provide the Federal entity with notice and an opportunity for a formal hearing on the record in accordance with the Administrative Procedures Act. 40 CFR Part 22 sets forth EPA's general rules of administrative practice governing the assessment of administrative penalties. If EPA issues an order and no settlement is eventually reached, the head of the Federal entity may request an opportunity to confer with the Administrator following exhaustion of the Part 22 process. The Administrator's obligation to provide an opportunity to confer is only in connection with EPA-issued orders, not State orders. Therefore, EPA will not confer with Federal entities regarding State-issued orders. For more information see the *Guidance on Federal Facility Penalty Order Authority Under the Safe Drinking Water Act, as amended in 1996* (May 29, 1998), which is briefly described in Section A.1 of this chapter.

2. Judicial Actions

There are two types of judicial actions: civil and criminal. With regard to civil judicial actions, DOJ has concluded that EPA may not sue another Executive Branch agency in Federal district court for violating environmental requirements. Instead, EPA enforcement against another agency is

[4]Before the 1996 SDWA Amendments, §1414(g) required EPA to provide notice and opportunity for a public hearing before a compliance order could take effect. The amended §1414(g) no longer requires this process.

accomplished through administrative actions. However, civil judicial actions still are available to parties other than EPA (e.g., States, private citizens) for the purpose of enforcing environmental requirements as each statute provides.

Most Federal environmental statutes specify violations for which criminal sanctions may be sought. Typically, these violations involve conduct that poses serious risks of endangerment to human health or the environment. Any Federal employee can be subject to criminal fines and imprisonment if convicted of a criminal violation. The employee against whom criminal charges are filed probably will be defended by DOJ only if it is determined to be in the best interest of the United States. For more information on criminal sanctions, see the enforcement discussion for each environmental statute contained in Chapter II, Section B.

C. OVERVIEW OF THE EPA ENFORCEMENT PROCESS

Although the statutory terms of each environmental program differ, there is a general enforcement process that is applicable to most, if not all, of these programs. This section discusses these common attributes.

1. Discovering Violations

EPA may discover or learn of violations by several means. These include 1) regular reporting required by most environmental statutes, and EPA or State inspections; 2) monitoring data; or 3) notification by the facility of violations discovered as a result of self-monitoring or auditing.

2. Notice of Violation (NOV)[5]

Generally, EPA bases its initial response to a violation on the following three factors:

< Type of violation;

< Potential risk posed by the violation; and

< Ability of the facility to address the violation.

Media-specific or program-specific guidance governs the type of initial response EPA may take.

When EPA determines that a violation warrants only an informal notification, the Federal Facility Coordinator (FFC) or media program staff may provide informal notification to the facility prior to formal written notification in cases where formal notification is also warranted. Informal notification affords the Federal facility an opportunity to correct the identified violation and may avert the need for EPA to issue a formal written notification.

[5] Historically, EPA included the use of Notices of Noncompliance (NONs) with NOVs at Federal facilities. Although these two documents are basically the same, EPA's preference is to use the NOV where such notice is warranted.

Formal notification may be in the form of a Notice of Violation (NOV)—the initial written notice EPA provides to require a Federal facility to address a minor, identified violation. An NOV issued to a Federal facility is similar to one issued to a private facility, except that it does not include the possibility of an EPA-initiated civil judicial action. The NOV is tailored to address the specific circumstances presented by the situation, the violation, and applicable program-specific requirements. Formal notification also may include, depending upon the statute, an order or request to negotiate a compliance agreement or consent order, as discussed in Section 4 below.

3. Response by Federal Facility

A Federal facility that has received an NOV generally has two options: 1) submit a certification of violation correction or 2) submit a response action plan. Each of these options is discussed below.

a. Certification of Violation Correction

To certify that a violation has been corrected, the facility must submit to EPA a letter that identifies the violation and describes the steps that have been taken to bring the facility into compliance. The letter must be accompanied by support documentation that demonstrates how compliance has been achieved. However, if EPA sends a letter in response to such a certification, it usually specifies that the certification does not limit EPA or the State from taking action at a later date.

b. Response Action Plan

The facility may be allowed to prepare and submit for EPA review and approval a response action plan. This plan should describe:

< The nature of the violation;

< The action to be taken to correct the violation;

< A schedule for implementing this action; and

< The content and frequency of progress reports to be provided.

EPA will usually respond in writing to the response action plan. For more significant violations that merit a formal EPA enforcement response, a proposed action plan and compliance schedule could serve as a basis for negotiating a compliance agreement or consent order between EPA and the facility. As with the certification of compliance, EPA's response to an action plan will specify that the facility is not insulated from further EPA or State enforcement action.

4. Orders (Unilateral and Consensual) and Compliance Agreements

Orders (unilateral and consensual) and compliance agreements are the primary mechanisms EPA uses to address violations at Federal facilities. The specific type, scope, and effect of the administrative enforcement tool used for a particular violation will depend on the specific statutory authority that is available to EPA for enforcing compliance at a Federal facility. Orders will be used

as EPA's principal formal enforcement response unless EPA lacks the statutory authority to issue them. Otherwise, EPA will use a consent agreement to resolve violations. As a general rule, prior to an order going final, the Federal agency will be provided an opportunity to meet with EPA to discuss key issues prior to it becoming final and effective.

When EPA and the Federal agency settle a matter, EPA will prepare orders or compliance agreements for joint signature by the affected facility and EPA. At a minimum, all orders or compliance agreements should provide that the violating facility take specified steps to achieve full compliance with the underlying statute. As appropriate, the agreement or order should provide for further enforcement or penalties if the facility fails to meet the established schedules for compliance.

5. Dispute Resolution Provisions

EPA frequently includes dispute resolution provisions in Federal facility settlements that may be used for resolving disputes (e.g., schedules, cleanup levels, technical reports, etc.) that may arise when implementing the terms of a signed agreement or order. In existing orders or agreements, the dispute is resolved according to the specific terms of a dispute resolution clause found in the particular compliance agreement or order. These provisions emphasize resolving disagreements at the Regional level, whenever possible.

6. Supplemental Environmental Projects (SEPs)

Consent agreements and orders may include SEPs. SEPs are defined as environmentally beneficial projects which a defendant/respondent agree to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform. In establishing an appropriate penalty, EPA considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and prior history of violations. Evidence of a violator's commitment and ability to perform a SEP also are relevant factors for EPA to consider in establishing an appropriate settlement penalty.

EPA has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The *Final Supplemental Environmental Projects Policy* (effective May 1, 1998) defines and provides key characteristics of a SEP, provides legal guidelines for determining when a SEP is appropriate, and provides procedures for calculating the final penalty.

There are seven categories of SEPs that EPA will consider:

< Public health;

< Pollution prevention;

< Pollution reduction;

< Environmental restoration and protection;

< Assessments and audits;

< Environmental compliance promotion; and

< Emergency planning and preparedness.

The policy also includes a category for other types of projects that may be accepted with the advance approval of OECA. The policy also identifies projects which are not acceptable as SEPs.

For more information on SEPs, including procedures for oversight and drafting SEPs, and community involvement in SEPs, please consult the *Final Supplemental Environmental Projects Policy* (effective May 1, 1998). For more information regarding this policy, see Section A.2.b of this chapter.

7. Impact of Fund Availability

E.O. 12088, *Federal Compliance with Pollution Control Standards*, requires that "the head of each Executive Branch agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget." Although most environmental statutes excuse performance when the President has expressly requested an appropriation and Congress has denied the requested appropriation, such situations are extremely rare. Compliance agreements and orders should require that the responsible Federal official seek any additional funds necessary to correct violations in accordance with the schedule in the agreement or order.

During negotiations on compliance agreements or orders, Federal officials will be expected to offer the most expeditious means of funding. However, EPA recognizes that the Anti-Deficiency Act prohibits Federal officials from committing funds beyond those they are authorized to spend. Additional appropriations should be necessary only when it has been determined that existing agency funds are either unavailable or inadequate despite cost-savings attempts to address the violations. The Federal official signing a compliance agreement or order should have the authority to obligate the funds or make the necessary budget requests to expeditiously correct the violation according to the schedule outlined in the agreement or order.

8. Community Involvement in Enforcement Actions

Community involvement may vary depending on the statute involved, the nature of the violations for which enforcement is sought, and the type of enforcement action initiated. Statutory or regulatory authority may provide for a public hearing or meeting concerning proposed orders or may allow citizens to review and provide comments on proposed plans for achieving compliance.

a. Community Relations Activities

Although some statutes may not specify community involvement as a requirement, EPA encourages and actively seeks community participation in its environmental responsibilities. For example, EPA policy requires that a community relations effort accompany any Superfund remedial investigation and response, whether it be Federal-, State-, or enforcement-lead. The box on the following page lists suggested community relations activities during CERCLA response actions.

SUGGESTED COMMUNITY RELATIONS ACTIVITIES DURING CERCLA RESPONSE ACTIONS INCLUDE:

, Interagency Agreement (IAG) for Remedial Investigation/Feasibility Study (RI/FS) and Remedial Design/Remedial Action (RD/RA)	- Notice and public comment on the IAG
, Record of Decision (ROD)	- Notice of public comment in major local newspaper - Opportunity for a public meeting - Responsiveness summary on public comments
, Restoration Advisory Boards	

When citizens are involved early and often in the process, cleanup is enhanced rather than impeded. Each of EPA's ten Regions have a community relations staff to assist with outreach activities. In general, community involvement processes should provide opportunities for the general public both to get information about cleanup activities and to affect decisions. These efforts are an integral part of cleanup programs and should be considered a basic cost of doing business. Community involvement efforts should reach out to the broadest range of stakeholders possible and seek their involvement through a variety of effective and innovative methods appropriate to their community.

In April of 1996, the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) issued its final report which, among other things, recommended that Federal agencies create site-specific advisory boards (SSABs) to involve stakeholders actively in the cleanup decisionmaking process. In addition to SSABs, the Department of Defense (DoD) has established restoration advisory boards (RABs) which, like SSABs, involve meeting with stakeholders to exchange information and discuss issues, concerns, and progress. EPA usually participates in the SSAB and RAB meetings, which are intended to increase the acceptability of government decisions and reduce conflict. For more information on FFERDC and SSABs, see Section F of Chapter III. For more information on RABs, see Section C.1 of Chapter II.

b. Citizen Suits

Most environmental statutes also authorize citizens to file a lawsuit against any party, including a Federal agency, for alleged violations of a statute. In addition, most citizen suit provisions limit actions for violations for which EPA has commenced and is diligently pursuing an enforcement action. For more detailed information on the citizen suit provisions of selected environmental statutes, see Section B of Chapter II.

9. Publicizing Enforcement Actions

It is the policy of EPA to use the publicity of enforcement and compliance assurance activities as a key element of the Agency's program to deter noncompliance with environmental laws and regulations. Actively publicizing these activities on a timely basis informs the public, the media, and the regulated community about EPA's efforts to promote compliance and deter violations of environmental law.

Press releases are designed to disseminate pertinent information to the news media. The specific content of press releases is an internal EPA matter at all times and is not an issue for discussion during settlement negotiations. As a public agency, EPA has an obligation to listen and be sensitive to the concerns of any stakeholder or member of the public that our statements be accurate and not create false impressions. However, EPA policy does not permit EPA employees to negotiate, in any way, either the Agency's options to issue press releases or their content or wording with parties outside of EPA, including those parties involved in settlements, consent decrees, or the regulatory process.

D. EPA RESPONSE TO VIOLATIONS AT FEDERAL FACILITIES OPERATED BY NON-FEDERAL PARTIES

Most environmental statutes require compliance by both facility owners and facility operators. There are several types of owner-operator relationships[6]:

< Government-owned/contractor-operated (GOCO);

< Jointly-owned/contractor-operated (JOCO);

< Government-owned/privately-operated (GOPO);

< Contractor-owned/contractor-operated (COCO); and

< Privately-owned/government-operated (POGO).

In each of these circumstances, the relative level of involvement and responsibility between the Federal agency and private party varies. For example, Federal responsibility for a COCO facility is much less than for a GOCO facility. Definitions of these facility types are provided in Chapter I, Table I-1, Types of Federal Facilities.

1. General Enforcement Policy for Contractor-Operated Facilities

Where EPA has the authority under a given statute to initiate an enforcement action against an owner or operator at a facility and the contractor (or subcontractor) fits the statutory or regulatory definition

[6]How Federal facilities are categorized for tracking purposes is not determinative of how they will be treated for enforcement purposes.

of an operator, EPA may exercise its discretion to pursue enforcement against the Federal agency, the contractor-operator, or both. While Federal owners may be ultimately responsible for compliance with environmental requirements, EPA supports enforcement actions against government contractors for violations at Federal facilities, where appropriate.

Contractor liability is not affected by indemnification agreements between government agencies and contractors. Contractor liability is as extensive as it would be for private contractors operating at a nongovernment facility.

Upon the initiation of an enforcement action against a contractor, EPA will treat the contractor the same as it treats all other private parties that are subject to environmental laws and regulations. Once an enforcement action has been initiated solely against a contractor, Federal owners should be discouraged from engaging in substantive communication with EPA on behalf of the contractor-operator.

2. Permit Applications

Where a contractor at a Federal facility meets the statutory or regulatory definition of an operator under the particular environmental statute at issue, the contractor should sign the permit application as an operator as would any other operator at a privately-owned facility. In many cases, a Federal facility consists of several distinct areas that may be operated by different contractors. For example, each contractor that operates an area dealing with hazardous waste management at a Federal facility should be a signatory to the permit application.

EPA recognizes that, in some instances, both a Federal agency and its contractors are operators of a facility and multiple operator signatures on the permit application would be appropriate. For contractors that meet the definition of an operator and are hired subsequent to the issuance of the permit, the permit should be modified to include the new contractor as an operator of the facility.

3. Identification of Appropriate Enforcement Responses

In determining the appropriate enforcement response at a particular facility, site-specific factors are of primary importance. In evaluating enforcement response options, EPA will not consider controlling the language and content of the contract that governs relations between the Federal agency and the contractor. For example, the existence of an indemnification provision within the contract does not control EPA's determination of the appropriate party to be named in an enforcement action. Similarly, the status given to the contractor within the contract is not necessarily indicative of the contractor's operator status for enforcement purposes. Essentially, the contractor-operator should be treated in the same manner as any private operator and the terms of the government contract should not shield the contractor from liability that otherwise would be imposed under environmental laws and regulations.

There are some common factors that should be considered in the evaluation of which enforcement option to initiate at contractor-operated facilities. Special factors affecting EPA's enforcement decision include:

< The degree of contractor-operator oversight and control over facility operations;

< The degree of contractor-operator responsibility for management of the particular regulated activity at issue (e.g., waste management, toxic substance management, national pollutant discharge elimination system discharges);

< The amount of responsibility for the violation that is attributable to the contractor; and

< The degree to which compliance has been delayed due to prolonged and inconclusive negotiations between EPA and the Federal agency.

EPA Regional offices should carefully consider the implications of issuing CERCLA orders to government contractors. In some instances, there may be policy considerations that make this enforcement response inappropriate. However, there is no prohibition in CERCLA restricting EPA's enforcement authority against government contractors and it may make sense depending on the situation. Contractor liability at Federal government facilities is as extensive as it would be for private contractors operating nongovernment facilities. For more detailed information regarding enforcement under CERCLA, please consult the *EPA Enforcement Policy for GOCO Facilities* (January 7, 1994). A summary of this policy is provided in Section A.2.a of this chapter.

4. Contractor Listing

Under the CWA and CAA statutes, Federal agencies are prohibited from awarding a contractor certain Federal contracts, grants, loans, or other assistance if the contractor is convicted of criminal violations under §113 of the CAA or §309(c) of CWA. EPA's Suspension and Debarment Division implements the provisions of these statutes and places the names of those convicted or their facilities on EPA's *List of Violating Facilities*. The names also are placed on the General Services Administration's *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* (the *List*), which is commonly referenced by all Federal agencies.

40 CFR Part 32 provides the mechanisms for removal from the *List* and also provides for discretionary debarment actions, which result in the debarred entity being placed on the *List*. Discretionary debarment actions are initiated when a contractor's action negatively affects the present responsibility of the contractor/recipient. Thus, a discretionary action may be appropriate where a contractor operates a Federal facility in a manner that causes serious environmental violations, thereby evidencing a lack of present responsibility.

E. STATE/TRIBAL GOVERNMENT RESPONSE TO FEDERAL FACILITY VIOLATIONS

1. State/Tribal Government Responsibilities Under Delegated/Authorized Programs

States and Tribal governments with delegated Federal program authority or authority to administer a State/Tribal program in lieu of a Federal program have primary responsibility for enforcement of the requirements of such programs. The extent of delegation or State/Tribal program authorization varies from program to program, but much program administration and enforcement responsibility

under environmental statutes has been delegated to the States and Tribes. Generally, one condition of program delegation or authorization is that the State/Tribe demonstrate that it has adequate enforcement authority to require full compliance with program requirements. For additional information, refer to Chapter III, Section D, American Indian Tribes.

EPA retains parallel authority, however, to enforce Federal requirements even when program authority is delegated to a State or Tribal government. To avoid duplication of effort, when a program is delegated or a State/Tribal program approved, EPA will take enforcement action only if:

< The State/Tribal government fails to take timely and appropriate action;

< The State/Tribal government requests EPA to take the lead or participate in a joint action; or

< Other limited circumstances are present, as outlined in the *Policy Framework for Implementing State/EPA Enforcement Agreements* (July 1993).

2. State/Tribal Government Enforcement Actions

State/Tribal enforcement authority at Federal facilities is defined by two principal factors. First, the specific terms of a statute's waiver of sovereign immunity determines the extent to which a Federal facility is subject to the State/Tribal government requirements, procedures, and penalties, and whether a Federal facility may be sued in court. The second factor is the extent of State/Tribal authority provided by the delegated/authorized Federal program or State/Tribal legislation that authorizes enforcement.

States/Tribes can pursue civil judicial enforcement actions against Federal facilities, provided such actions are not barred by sovereign immunity or limitations established in State/Tribal legislation. States/Tribes generally will utilize the range of available enforcement tools against Federal facilities in the same manner and to the same extent as at private facilities.

3. EPA Involvement in State/Tribal Government Enforcement Actions

EPA will provide technical assistance and support to Federal agencies' efforts to comply with environmental requirements, as provided by E.O. 12088, *Federal Compliance With Pollution Control Standards*. Specifically, E.O. 12088 establishes a duty for EPA to "make every effort to resolve conflicts regarding such violations between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency."

This responsibility may require EPA involvement in resolving noncompliance problems even when the State/Tribal government has lead enforcement responsibility. If either the State/Tribal government or Federal facility in violation requests EPA involvement, EPA will assist in resolving the conflict as appropriate.

F. SIGNIFICANT VIOLATORS AND SIGNIFICANT NONCOMPLIERS (SNCS)

Facilities that are SNCs are those having a violation of significant magnitude and/or duration that warrants priority for review and/or response by an agency. However, it is not necessary for a violation to be defined as "SNC" in order for EPA to take an enforcement action, including a criminal prosecution. Significant noncompliance applies to Federal facilities regulated under RCRA, CWA, CAA, SDWA, and the Toxic Substances Control Act (TSCA). Facilities in significant noncompliance are identified on the basis of certain data fields within IDEA. The precise nature of these fields varies across statutes. For more information on IDEA, see Chapter I.

Exhibits V-2 through V-6 below and on the following pages provide program definitions for SNCs under the CAA, CWA, RCRA, TSCA, and SDWA.

Exhibit V-2: Program Definitions for CAA SNCs

CLEAN AIR ACT

Agencies shall deem a source to be a Significant Violator if it is:

, A major source (as defined by the Clean Air Act Amendments (CAAA), except for asbestos demolition and renovation (D&R) national emission standard for hazardous air pollutants (NESHAP), *and* it violates any one or more of the following:

a. State implementation plan (SIP) emission, monitoring, or substantial procedural requirements, regardless of pollutant designation status.
b. New source performance standard (NSPS) emission, monitoring, or substantial procedural requirements.
c. NESHAP emission, monitoring, or substantial procedural requirements for existing NESHAP standards and promulgated maximum available control technology (MACT) requirements.
d. SIPs, NSPS, or NESHAP emission, procedural, or monitoring requirements violated *repeatedly or chronically* (e.g., exceeds emission limit or gets no continuous monitoring data for 5 percent or more of the time in a calendar quarter).
e. Any provision of a Federal Consent Decree or Federal Administrative Order.
f. Any substantive provision of a State Judicial Order or a State Administrative Order which was issued for an underlying SIP violation.
g. Any requirement of Part C or Part D of Title I of the CAAA (e.g., new construction of a major source, major modification of a major source).

, Any synthetic minor source, *and* it is in violation of any one or more of the following:

a. Avoiding prevention of significant deterioration (PSD) of air quality while violating an emission limit or permit condition that affects the PSD status.
b. Exceeding its permitted emission standard above the amount that would classify the source as a non-attainment area major source.

Exhibit V-2: Program Definitions for CAA SNCs (continued)

CLEAN AIR ACT (continued)

, In the case of emergency episodes, the seriousness of the violation would normally require expedited action. In the case of a source constructed without a required PSD or Part D permit, options for obtaining relief may be foreclosed by allowing the source to continue to construct and, therefore, expedited action may be essential.

Exhibit V-3: Program Definitions for CWA SNCs

CLEAN WATER ACT

For the national pollutant discharge elimination system (NPDES), significant noncompliance is defined by the following occurrences:

, Violation of any monthly effluent limit at a given pipe by *any* amount for any 4 or more months during two consecutive quarter review periods;

, Violations of conditions in enforcement orders;

, Violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or permit;

, Violations of all pretreatment schedule milestones by 90 days or more;

, Violation of permit effluent limits that exceed the Appendix A *Criteria for Noncompliance Reporting in the NPDES Program*;

, Failure to provide either Discharge Monitoring Reports, Publicly-Owned Treatment Works (POTW) Pretreatment Performance Reports, or Compliance Schedule Final Report of Progress, or providing above reports 30 or more days late;

, Violation of a permit limit at a given discharge point for any 2 or more months during the two consecutive quarter review periods; or

, An unauthorized bypass, an unpermitted discharge, or a pass-through of pollutants that causes, or has the potential to cause, a water quality problem or health problems.

Exhibit V-4: Program Definitions for RCRA SNCs

RESOURCE CONSERVATION AND RECOVERY ACT

, Under the *1996 Revised Hazardous Waste Enforcement Response Policy*, significant noncompliers are those facilities that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, or agreement or from RCRA statutory or regulatory requirements.

Exhibit V-5: Program Definitions for TSCA SNCs

TOXIC SUBSTANCES CONTROL ACT

Under TSCA, significant noncompliance is a violation that would normally result in an administrative complaint and includes, but is not limited, to:

, Any polychlorinated biphenyls (PCB) violation involving improper disposal, manufacture, processing, distribution in commerce, improper use, storage, marking and/or recordkeeping violations;

, Any asbestos-in-schools violation involving failure to inspect, sample, analyze, post warnings, notify, and/or keep records where asbestos is present;

, Any violation of testing requirements under TSCA §4;

, Any violation of premanufacturing notification under TSCA §5;

, Any violation of TSCA §13 including failure to certify that all imported chemical substances are in compliance with TSCA or are not subject to TSCA, or falsification of a certification report; and

, Any violation of TSCA §8 including failure to submit required records, falsification of records, or incomplete reporting and/or recordkeeping.

, Any violation of significant new use rules under TSCA §5; or

, Any violation of export notice requirements under TSCA §12(b).

Exhibit V-6: Program Definitions for SDWA SNCs

SAFE DRINKING WATER ACT

For the Underground Injection Control (UIC) program, significant noncompliance means:

, For an owner/operator of a Class I well, violations as described in 40 CFR §144.8(a) and on EPA Form 7520-4. Minor infractions (e.g., late paperwork, absence of wellhead signs) do not necessarily mean significant noncompliance, unless there is a pattern of repeated, late reporting.

, The following violations by Class I UIC well owners and/or operators include, but are not limited to:

- Contamination of an underground source of drinking water (USDW);
- Injection of unauthorized fluid(s);
- Injection into unauthorized zones;
- Failure to cease injection after loss of mechanical integrity (MI) detected;
- Failure to comply with corrective action requirements;
- Failure to operate automatic shutdown system;
- Failure to operate automatic warning system;
- Unauthorized plugging and abandonment;
- Violation of Formal Order;
- Knowing submission of false information;
- Violations involving loss of mechanical integrity;
- Violations of maximum injection pressure;
- Failure to install and/or operate injection pressure and annulus pressure monitoring systems or other monitoring systems, required by permit or rule;
- Failure to maintain required annulus pressure; and
- Failure to submit monthly, quarterly, or other reports when original monitoring data have not been obtained and/or retained.

, For an owner/operator of a Class II, III, or V well, any unauthorized emplacement of fluids (where formal authorization is required).

, For an owner/operator of a Class II, III, or V well, operation without mechanical integrity that causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering an USDW judged according to the following criteria:

- The characteristics of the fluid released;
- The quantity of fluid released; and
- The relationship of the point of release to any USDW. Potential endangerment exists in cases where the release occurs above or into an USDW; or the release occurs below an USDW, but the hydrogeology is such that fluids may be forced upward into the USDW.

Exhibit V-6: Program Definitions for SDWA SNCs (continued)

SAFE DRINKING WATER ACT (continued)

For the UIC program, significant noncompliance means (continued):

, For an owner/operator of a Class II, III, or V well, operation at an injection pressure that exceeds the permitted or authorized injection pressure and causes the movement of fluid outside the authorized zone of injection if such movement may have the potential for endangering an USDW. Potential endangerment exists if:

- Pressure in the tubingless well exceeds the mechanical integrity test (MIT) pressure of the casting; or
- Pressure exceeds the fracture pressure of the confining zone and the zone immediately above the confining zone is an USDW.

, For an owner/operator of a Class II, III, or V well, failure to properly plug and abandon an injection well in any manner other than what is authorized.

, For an owner/operator of a Class II, III, or V well, any violation of a formal enforcement action, including an administrative or judicial order, consent agreement, judgment, or equivalent State action.

, For an owner/operator of a Class II, III, or V well, the knowing submission or use of any false information in a permit application, periodic report, or special request for information about a well.

, For an owner/operator of a Class II, III, or V well, any other violation that the Director considers significant.

For public water system standards, significant noncompliance definitions are:

, **Total Coliform Rule (TCR) Maximum Contaminant Level (MCL)**

a. MONTHLY MONITORING: $ 4 acute/monthly MCL violations in any 12 consecutive months
b. QUARTERLY MONITORING: $3 acute/monthly MCL violations in any 4 consecutive quarters.
c. ANNUAL MONITORING: $ 2 acute/monthly MCL violations in any 2 consecutive periods.

, **TCR Monitoring and Reporting (M/R)**

a. MONTHLY MONITORING: In any 12 consecutive months, meeting one of the following criteria:

$ 4 major repeat M/R violation
$ 4 combined major repeat M/R, and MCL violations
$ 6 combined major repeat M/R, major routine M/R, and/or MCL violations
$ 10 combined major/minor routine/repeat M/R and/or MCL violations

Exhibit V-6: Program Definitions for SDWA SNCs (continued)

SAFE DRINKING WATER ACT (continued)

b. QUARTERLY MONITORING: In any four consecutive quarters, meeting one of the following criteria:

$ 3 major repeat M/R violations
$ 3 major repeat M/R, major routine M/R and/or MCL violations

c. ANNUAL MONITORING: In any two consecutive 1-year periods, meeting one of the following criteria:

$ 2 major repeat M/R violations
$ 2 combined major repeat M/R, major routine M/R, and or MCL violations

, **Turbidity MCL**

a. MONTHLY MONITORING: $ 4 MCL violations in any 12 consecutive months
b. QUARTERLY MONITORING: $2 MCL violations in any four consecutive quarters

, **Turbidity M/R and Combined M/R and MCL**

a. MONTHLY MONITORING: In any 12 consecutive months, having either of the following:
$ 6 major M/R and/or MCL violations
$ 10 major/minor M/R and/or MCL violations

b. QUARTERLY MONITORING:
$3 major M/R and/or MCL violations in any four consecutive quarters

c. ANNUAL MONITORING
$2 major M/R and/or MCL violations in any two consecutive 1-year periods

, **Chemical/Radiological MCL (excluding Nitrate)**

a. Exceeds the short-term acceptable risk to health level

, **Nitrate MCL**

a. > 10 mg/l

Exhibit V-6: Program Definitions for SDWA SNCs (continued)

SAFE DRINKING WATER ACT (continued)

For public water system standards, significant noncompliance definitions are (continued):

, **Chemical/Radiological M/R**

a. Fails to monitor for, or report the results of, any regulated contaminant for $ 2 consecutive compliance periods

, **Public Notification**

a. Fails to provide public notification of the violation which caused the system to become an SNC

, **Surface Water Treatment Rule (SWTR)**

a. Unfiltered Systems
   - A system informed of the requirement to filter before January 1992 that does not install filtration by June 29, 1993
   - A system informed of the requirement to filter after December 1991 that does not install filtration within 18 months of being informed that filtration is required
   - A system that has three or more major M/R violations in any 12 consecutive months

b. Filtered Systems
   - A system that has four or more treatment technique violations in any 12 consecutive months
   - A system that has a combination of six violations including treatment technique violations and major M/R violations in any 12 consecutive months

, **Lead and Copper Rule (LCR)**

a. Initial Tap M/R - A system that does not M/R as required and does not correct a violation within:
   - 3 months for large systems
   - 6 months for medium systems
   - 12 months for small systems

b. Optimal Corrosion Control Installation - A system that fails to install optimal corrosion control on time and has a 90th percentile lead level of $ 30 parts per billion (ppb) in the most recent monitoring period

c. Source Water Treatment Installation - A system that fails to install source water treatment on time and has a 90th percentile lead level of $ 30 ppb in its most recent monitoring period

Exhibit V-6: Program Definitions for SDWA SNCs (continued)

SAFE DRINKING WATER ACT (continued)

For public water system standards, significant noncompliance definitions are (continued):

d. Public Education - A system that fails to complete public education as required and has a 90th percentile lead level of $ 30 ppb in its most recent monitoring period

NOTES:

(1) A "major" M/R violation (except for SWTR) occurs when no samples are taken or no results are reported during a compliance period. For SWTR, a major M/R violation occurs when at least 90 percent of the required samples are not taken or results reported during a reporting period.

(2) A "minor" M/R violation (except for SWTR) occurs when an insufficient number of samples are taken or incomplete results are reported during a compliance period. For SWTR, a minor violation occurs when less than 100 percent but more than 90 percent of the required samples are not taken or results reported during a reporting period.

(3) SNC definition is modified, if needed, to cover new regulations as they are promulgated.

(4) For details on the SNC definition, please see the following memoranda:

(a) **Revised Definition of Significant Noncomplier (SNC) and the Model for Escalating Responses to Violation in the PWSS Program**, May 22, 1990 (Water Supply Guidance #70)

(b) **Final SNC Definition for the TCR and Proposed SNC Definition for the SWTR**, December 19, 1990 (Water Supply Guidance #80)

(c) **Final BNC Definition for the SWTR**, February 28, 1991 (Water Supply Guidance #82)

(d) **Final Guidance for the Lead and Copper Definitions and Federal Reporting for Milestones, Violations, and SNCs**, May 1992

VI. COMPLIANCE ASSISTANCE, TRAINING, AND OUTREACH

This chapter discusses EPA's role in providing compliance assistance to Federal facilities. Included in the discussion are training opportunities, available hotlines, and access to EPA publications.

A. ROLE OF EPA HEADQUARTERS/REGIONS IN PROVIDING COMPLIANCE ASSISTANCE

Providing compliance assistance is a part of EPA's mission. The regulated community, including Federal facilities, is provided assistance in a variety of forms (e.g., workshops, conferences, round tables, training courses, hotlines, on-line systems, and publications). EPA's compliance assistance activities may be directed at a specific audience (e.g., Federal facilities) or intended for a broader audience (e.g., the regulated community in general). EPA offices typically involved in outreach activities include the Federal Facility Enforcement Office (FFEO), located within the Office of Enforcement and Compliance Assistance (OECA), the media program offices located in EPA Headquarters and the Regions, and the Federal Facility Coordinators (FFCs) located in EPA's Regional Offices.

FFEO is directly responsible for ensuring that Federal facilities comply with environmental requirements. One important component of FFEO's mission is to provide compliance assistance and training to Federal facilities. FFEO staff are involved in a variety of outreach initiatives that include workshops, conferences, round tables, and training, among others. FFEO publishes *FedFacs*, an environmental bulletin for Federal facilities. *FedFacs* is described in the adjacent box.

FEDFACS

FedFacs is a bulletin published periodically by FFEO. It contains articles for, by, and about Federal facilities. Look for the "Directors Word"—a column written by FFEO's director; "Guest Spot," which illuminates executives of other Federal agencies; "The Hammer," news about enforcement updates; the most recent "Calendar of Events"; and other noteworthy news items.

FFEO also publishes the *EPA/FFEO Compliance Assistance Tools for Federal Facilities* which lists recent documents and resources available from FFEO. The *EPA/FFEO Compliance Assistance Tools for Federal Facilities* is presented in Appendix D.

EPA's media program offices (e.g., air, water) also are involved in outreach efforts. Typically, these offices provide assistance through the development of guidance and policy documents and by providing technical expertise in developing training courses.

The most direct source of technical assistance for Federal facilities is the Regional FFC. FFCs serve as the primary Regional point-of-contact for facility environmental managers and as a link between EPA and Federal facilities. Providing program assistance, training, and outreach for Federal facilities are among the many duties of an FFC. FFCs help coordinate training opportunities available to Federal agencies and establish interagency forums and hold quarterly round table meetings and seminars that are used to disseminate information and discuss critical issues. Additionally, Regional FFCs, in cooperation with each of the Regional media program offices, coordinate annual multimedia compliance conferences to assist Federal facilities on technical issues. More information on the roles and responsibilities of FFEO and FFCs is provided in Chapter VII.

B. WORKSHOPS, CONFERENCES, AND ROUND TABLES

EPA assistance is often provided through workshops or meetings, such as conferences, seminars, and round tables. These forums, which are held at EPA Headquarters or the EPA Regions, provide opportunities for EPA and Federal facility personnel to meet, discuss, and share information on current environmental issues. These forums may be designed for Federal facilities in general or may be tailored to meet the needs of a more specific Federal facility audience, such as civilian Federal agencies (CFAs) or a particular facility.

Workshops, conferences, and round tables may be convened to meet a variety of needs. For example, a workshop may be developed for explaining the technical details of implementing the requirements of a new rule or regulation, or a conference may be held to identify the types of information Federal facilities need to ensure compliance with specific environmental requirements. Additionally, meetings may be held to discuss new EPA policies and initiatives, such as a new guidance document issued by one of EPA's media program offices. The following are examples of forums that EPA has implemented to provide assistance and guidance to Federal agencies:

< *Federal Agency Environmental Round Table*: FFEO has established a monthly interagency round table to provide an exchange of information and ideas on environmental compliance topics between EPA and other Federal agencies.

< *Civilian Federal Agencies Task Force*: FFEO created this task force to provide targeted compliance assistance to CFAs on improving their environmental management programs.

< *Interagency E.O. 12856 Pollution Prevention Task Force*: This task force was created under E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements.* The Interagency Pollution Prevention Task Force (IPPTF) guides Federal agencies in their implementation of E.O. 12856 and promotes pollution prevention efforts with activities and requirements of related E.O.s. The IPPTF is made up of representatives from 19 different Federal agencies.

Workshops, conferences, and round tables provide structured opportunities for Federal agency staff to learn about environmental regulations, technical issues, and EPA policies and initiatives. These forums are intended to assist Federal agencies with developing and improving their environmental compliance programs.

C. HOTLINES AND ON-LINE SYSTEMS

EPA has developed a number of clearinghouses, hotlines, and electronic bulletin boards to provide a wide spectrum of outreach and assistance to Federal, State, and local agencies and the general public. Hotlines provide direct one-on-one answers to specific questions while bulletin board systems provide broad information on numerous topics. Clearinghouses use bulletin boards and hotlines to promote networking and transfer of critical information among users and serve as a central area for technical reports and documents that might otherwise be difficult to access.

EPA hotlines and on-line services operate up to 24 hours a day, 7 days a week and provide technical assistance and general information on a wide variety of topics including pesticide use, hazardous waste cleanup and disposal, EPA regulations, multimedia issues, and many other areas of interest. An example of the specialized information available to agencies is the Toxic Release Inventory User Support (TRI-US). TRI-US provides user support and access of TRI data to facilities and the general public. Specialized search assistance and documentation is available to users who need help in choosing and accessing TRI data. In addition, TRI-US performs customized on-line searches and provides training and demonstrations of the TRI on-line system and CD-ROM. The Resource Conservation and Recovery Act/Superfund/Emergency Planning and Right-to-Know Act Hotline is another resource available to Federal facilities. This hotline provides assistance on issues related to the Resource Conservation and Recovery Act, underground storage tanks, Superfund, pollution prevention, and waste minimi-zation. In addition to regulatory support, the hotline supplies information on documents relating to these subjects. On-line systems, such as Enviroene, described in the adjacent box, provide an additional means of obtaining information on technical assistance and training opportunities.

ENVIROENE

Enviroene is a free, public, integrated environmental information system that is designed to encourage a two-way dialogue on environmental issues, help ensure compliance with environmental requirements, and encourage the use of pollution prevention solutions to environmental problems. Enviroene facilitates the sharing of technology, procedures, and experience across Federal agencies, other governmental organizations, manufacturers, suppliers, researchers, and others. Enviroene was created out of a merger and expansion of EPA's Federal Facilities Leadership Exchange (FFLEX) bulletin board system and the Pollution Prevention Information Exchange System (PIES).

Enviroene permits the user to perform extensive key word and full text searches on thousands of documents authored by EPA; other Federal and State agencies; the National Pollution Prevention Round Table; and other industry, academic and non-project organizations. Enviroene features the following types of information: laws, executive orders, policies and guidance, fact sheets, proceedings, and case studies.

Enviroene is accessible via the World Wide Web (WWW) on the Internet at: **http://es.epa.gov**.
To reach the FFLEX, type:
http://es.epa.gov/oeca/fedfac/fflex.html.

In addition, *The Yellow Book: Guide to Environmental Enforcement and Compliance at Federal Facilities* provides information on numerous topics. For example, Chapter II provides summaries of environmental laws and E.O.s and contains hotline numbers relevant to these statutes; and Appendix E lists the hotlines identified in the Yellow Book. EPA also has an Internet Home Page that can be accessed on the World Wide Web at: http://www.epa.gov, as well as other Home Pages that contain useful information. Appendix F lists the Web pages identified in the Yellow Book and Web pages for EPA Headquarters and its ten Regions.

D. TRAINING

Training opportunities are provided by EPA Headquarters and Regional program offices, including EPA's National Enforcement Training Institute (NETI). NETI is a division of the Office of Criminal

Enforcement, Forensics, and Training within OECA. NETI is responsible for training Federal, State, Tribal, and local lawyers; inspectors; civil and criminal investigators; and technical experts in the enforcement of the nation's environmental laws. NETI offers training in a number of areas including case support, specific statute enforcement, compliance assistance, and environmental criminal enforcement.

For information on available NETI documents and training courses, call the NETI Hotline at 1-800-EPA-NETI or visit NETI's Home Page at http://es.epa.gov/oeca/neti.

E. On-Site Compliance Assistance

EPA also conducts a limited amount of on-site compliance assistance at Federal facilities. This assistance is usually done by the Federal Facility Coordinator and/or other Regional non-enforcement staff. This takes place in the form of Pollution Prevention Opportunity Assessments (PPOA), Environmental Management Reviews (EMR), and other similar on-site visits.

A PPOA is a systematic evaluation of processes and operations to determine specific characteristics that create environmental impact (e.g., wastes, releases of toxic chemicals to the environment, power/water usage, habitat destruction). For more information on PPOAs see the *Federal Facility Pollution Prevention: Tools for Compliance* (EPA/600-R-94-154).

An EMR is a collaborative effort between EPA and a Federal facility to evaluate the facility's environmental program and management systems. For more information see *Interim Final Policy on Environmental Management Reviews at Federal Facilities* (May 31, 1996).

F. EPA PUBLICATIONS

EPA produces publications covering a variety of environmental topics. These publications provide valuable information and assistance to Federal, State, Tribal, and local governments and the general public. The EPA National Publications Catalog, found at the EPA Headquarters Library, lists titles of approximately 4,500 brochures, newsletters, reports, and guidance documents drawn from a variety of EPA information services on topics ranging from pollution prevention to enforcement actions. FFEO has published a variety of helpful documents for Federal agencies. Appendix D provides a list of documents available from FFEO.

Examples of available publications include *The Compendium of Superfund Program Publications* (published annually and referred to as the *Compendium*) and *The Risk Assessment Review* (published bimonthly). The *Compendium* is a comprehensive listing of all current and historical publications in the Superfund and Hazardous Waste Enforcement Program including policy directives, guidance documents, and technology information. *The Risk Assessment Review* describes activities in EPA's risk assessment fields and advertises training, information sharing, and opportunities for bulletin board interaction. These publications, together with documents developed specifically for Federal agencies, can assist Federal facilities in developing and improving their compliance programs.

Copies of these and other EPA documents may be found in the following locations:

The **National Center for Environmental Publications and Information** (NCEPI) is EPA's clearinghouse for publications and a center for publications distribution. Almost 2,500 new titles

are added to the NCEPI database annually, allowing users to search and order EPA publications and multimedia products on a variety of topics. Technical and general environmental information is available to Federal, State, and local agencies as well as to the general public. For more information, contact *U.S. EPA National Center for Environmental Publications and Information, 26 West Martin Luther King Dr., Cincinnati, OH 45268. (513) 569-7985. Fax (513) 569-7186.*

The **Center for Environmental Research Information** (CERI) serves as the focal point for the exchange of scientific information produced at EPA. It supports activities of the Office of Research and Development. CERI's technical information components are responsible for the production and distribution of scientific and technical reports and for responding to requests for publications. For more information, contact *U.S. EPA Center for Environmental Research Information, 26 West Martin Luther King Dr., Cincinnati, OH 45268. (513) 569-7562. Fax (513) 569-7566.*

The **EPA Information Resources Center** (IRC), which combines the former Public Information Center and the EPA Headquarters Library, provides access to EPA information for U.S. and international requests and has a range of information services consisting of environmental and related subjects of interest to EPA staff, including on-line searching of commercial databases. The focus of the IRC collection is on environmental regulations, policy, planning, and administration. The IRC also maintains a large collection of EPA documents on microfiche and in hard copy. IRC staff support EPA's web presence through web page design and organization and Internet search assistance. The Center provides these services to EPA staff with restricted use of services available to the general public. For more information, contact *Information Resources Center, 401 M St., S.W., Room 2904, Washington, D.C. 20460. (202) 260-9152. Fax (202) 260-5153.*

The **EPA Regions** also maintain libraries containing both general and specialized information on numerous environmental issues. For example, some Regions maintain extensive collections of journals, documents, and reports on topics such as environmental law and air pollution. Other Regional libraries contain information focusing on a specific area of the environment, such as marine, coastal, or estuarine research. Descriptions of additional services and the locations of these libraries may be found in **ACCESS EPA**, which is described below. For more information, contact *U.S. EPA, Information Resources Center, Room 2904, 401 M St., S.W., Washington, D.C. 20460. (202) 260-9152. Fax (202) 260-5153.*

The **National Technical Information Service** (NTIS) collects, archives, and reproduces documents from a variety of government agencies, including EPA. It is the central source for the public sale of U.S. and foreign government-sponsored research, development, engineering, and business reports. Approximately 70,000 new technical reports of completed research are added annually to the NTIS database. The latest technical reports may be found by searching the NTIS Bibliographic Database on-line, using the services of vendors or organizations that maintain the database for public use. The entire database in readable form may be leased directly from NTIS. The NTIS pilot project, FedWorld, provides access to more than 100 computer bulletin board systems operated by the U.S. government through the FedWorld Gateway. These systems contain information on a variety of environmental concerns. For more information, contact *Chief Order Processing Branch, National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161. (703) 487-4650. Fax (703) 321-8547.*

The **Government Printing Office** (GPO) prints, distributes, and sells government documents in bookstores throughout the country. GPO administers a system of depository libraries nationwide that collect the materials printed by GPO for Federal agencies. Through its document program, GPO disseminates a substantial volume of information, offering an estimated 12,000 titles to the public at any one time. Information is also available on CD-ROM and on an electronic bulletin board system. For more information, contact *U.S. Government Printing Office, 710 N. Capitol St., N.W., Washington, D.C. 20401. (202) 512-1800. Fax (202) 260-1800.*

Many publications are available free of charge to the general public; however, a fee may be charged when ordering documents through NTIS, GPO, or commercial distributors. **ACCESS EPA** (EPA 220-B-95-004, November 1995) is a guide to many major information resources, such as clearinghouses, hotlines, records, databases, models, and documents. **ACCESS EPA** provides an overview of more than 300 information resources, including both EPA and State contacts capable of supplying important information on environmental topics.

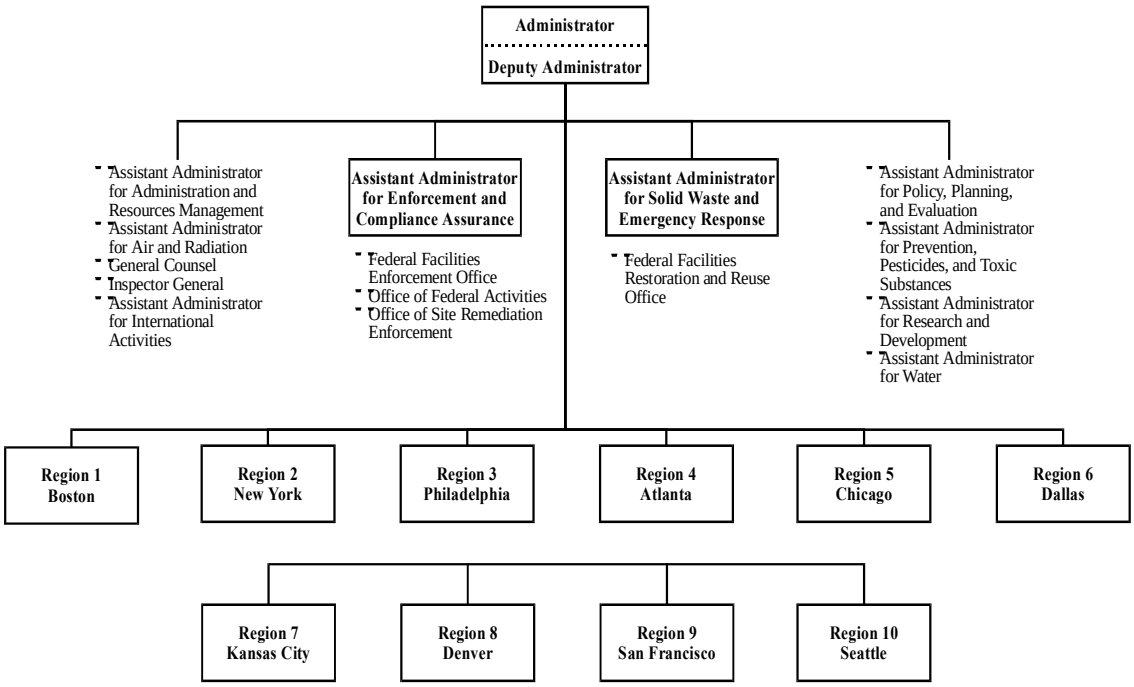
VII. EPA OFFICES WITH MAJOR FEDERAL FACILITY RESPONSIBILITIES

Chapter VII provides an overview of the major organizations and groups within EPA that are directly involved in activities affecting Federal facilities. The chapter discusses the roles and responsibilities of the Federal Facilities Enforcement Office, Federal Facilities Restoration and Reuse Office, Office of Site Remediation Enforcement, Office of Federal Activities, Federal Facilities Leadership Council, and Regional Federal Facility Coordinators.

A. EPA OVERVIEW

EPA reinforces efforts on the part of other Federal agencies to assess the impact of their operations on the environment. EPA carries out these duties through 11 Headquarters offices and 10 Regions. Most EPA Headquarters and Regional program offices work with Federal facilities through their normal course of business (e.g., program implementation activities and guidance and policy development efforts) and therefore have some Federal facility responsibilities. Two Headquarters Offices that have direct oversight responsibility for Federal facility compliance activities are the Office of Enforcement and Compliance Assurance (OECA) and the Office of Solid Waste and Emergency Response (OSWER). These two offices and their relationship to other EPA offices is depicted below.

U.S. Environmental Protection Agency



OECA ensures that the nation's environmental laws are complied with and, if necessary, enforced. OECA's chief mission is to protect the well-being of all Americans and the nation's environment and natural resources. OECA's goal is to ensure full compliance with U.S. environmental laws while inspiring the regulated community to employ methods that focus on pollution prevention. OECA is comprised of several staff offices, including the Federal Facilities Enforcement Office (FFEO).

OSWER provides Agency-wide policy, guidance, and direction for EPA's solid waste and emergency response program. The Office develops guidelines and standards for the land disposal of hazardous wastes and for underground storage tanks. OSWER furnishes technical assistance in the development, management, and operation of solid waste activities and analyzes the recovery of useful energy from solid waste. OSWER also implements programs to respond to abandoned and active hazardous waste sites and accidental releases (including some oil spills) and to encourage the use of innovative technologies for contaminated soil and groundwater. OSWER is comprised of several staff offices, including the Federal Facilities Restoration and Reuse Office (FFRRO).

B. FEDERAL FACILITIES ENFORCEMENT OFFICE

As part of OECA, FFEO is responsible for ensuring that Federal facilities take all necessary actions to prevent, control, and abate environmental pollution. FFEO consists of two groups: the Planning, Prevention, and Compliance Staff (PPCS) and the Site Remediation and Enforcement Staff (SRES). These two groups develop national policy and guidance on compliance and enforcement issues confronting Federal facilities. FFEO participates in enforcement negotiations, oversees compliance assistance enforcement activities undertaken by the Regions, and is responsible for resolving enforcement disputes between EPA and other agencies. To assist in these responsibilities, each EPA region has a Regional Federal Facility Coordinator (FFC) who reports regularly to FFEO. The roles and responsibilities of the FFCs are discussed in detail in Section G of this chapter. FFCs play a key role in implementing EPA's Federal facility programs.

> For more information about FFEO, please visit the office's Home Page at:
> **http://es.epa.gov/oeca/fedfac/fflex.html**

PPCS, with the assistance of the Regional FFCs, is responsible for developing and initiating activities to prevent noncompliance at Federal facilities and for overseeing compliance and enforcement activities. Examples of PPCS activities include:

< Developing, coordinating, and tracking Federal facility compliance assurance and assistance efforts; improving environmental management and auditing programs; and managing the Federal Facilities Tracking System (FFTS) and other enforcement and compliance databases;

< Promoting pollution prevention and environmental justice goals through implementation of E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*, and other executive orders;

< Managing the Federal Facilities Multimedia Enforcement/Compliance Program and the Federal Agency Environmental Management Program Planning (FEDPLAN) that oversees Federal agencies' environmental compliance budget requests; and

< Facilitating the use of innovative environmental technologies to attain prevention, compliance, and cleanup goals.

SRES primarily works with Federal agencies and other offices in EPA (including FFRRO) to streamline enforcement and cleanup at Federal facilities. Specific SRES responsibilities include:

< Reviewing, coordinating, and participating in the negotiation and implementation of Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), interagency agreements (IAGs), and Memoranda of Understanding;

< Coordinating development of CERCLA enforcement policy through EPA Regions and the Federal Facility Leadership Council; and

< Developing regulations, policies, guidance, and strategies for Federal facilities enforcement under the Resource Conservation and Recovery Act (RCRA) and other environmental statutes.

Through careful planning and application of enforcement tools, SRES helps ensure compliance and expedite cleanup of Federal facilities posing the greatest risk to human health and the environment.

FFEO administers numerous programs to facilitate the cleanup of Federal facilities and foster improved environmental compliance at Federal facilities. These range from direct involvement in enforcement negotiations to technical assistance and training. FFEO's efforts include the following:

< *Enforcement Actions and Negotiations*: FFEO participates in enforcement negotiations, oversees enforcement activities undertaken by the Regions, and is responsible for resolving enforcement disputes between EPA and other agencies. On nationally significant cases, FFEO coordinates with the Regions on issuing compliance orders and agreements. Actions against Federal agencies include notices of violation, IAGs, orders, and agreements under all relevant environmental statutes. In appropriate cases, enforcement actions may involve monetary penalties.

< *Federal Facilities Multimedia Enforcement Compliance Program (FMECP)*: The FMECP uses EPA and State multimedia inspections and enforcement actions to improve Federal facility compliance, reduce environmental risks, increase enforcement efficiency, and encourage pollution prevention.

< *Federal Agency Environmental Management Program Planning*: To provide technical assistance in environmental planning and operations to Federal facilities, FFEO reviews annual E.O. 12088, *Federal Compliance with Pollution Control Standards*, and FEDPLAN submissions from all Federal agencies. FFEO also provides guidance to assist EPA Regional staff and Federal agency personnel on the FEDPLAN system.

< *Federal Agency Environmental Round Table*: FFEO has established a monthly interagency round table to provide an exchange of information and ideas on environmental compliance topics between EPA and other Federal agencies. Topics of

A current agenda can be found at: **http://es.epa.gov/new/groups/rndagroup.html**

discussion include information needed to prepare the annual Federal agency pollution abatement and prevention plans required by E.O. 12088 and the FEDPLAN process; innovative cleanup technologies; the hazardous waste docket; proposed EPA strategies for various national programs; technical information systems and high profile topics such as the National Priorities List, base closure, and Toxic Release Inventory.

< *Civilian Federal Agencies Task Force*: FFEO created this Task Force to provide targeted compliance assistance to civilian Federal agencies on improving their environmental management programs.

< *Federal Facilities Environmental Justice*: FFEO coordinates the environmental justice initiative at Headquarters and works closely with the Regions on these issues. FFEO supports the Regional enforcement actions at Federal facilities when environmental justice concerns exist.

< *Federal Facilities Tracking System (FFTS)*: FFEO maintains FFTS, a PC-based system that provides a multimedia view of Federal facilities compliance for EPA Regions and Headquarters.

C. FEDERAL FACILITIES RESTORATION AND REUSE OFFICE

As part of OSWER, FFRRO works with the Department of Defense (DoD), Department of Energy (DOE), and other Federal entities to help these agencies and entities develop creative, cost-effective solutions to their environmental problems. FFRRO's overall mission is to facilitate faster, more effective, and less costly cleanup and reuse of Federal facilities. By focusing on teamwork, innovation, and public involvement, FFRRO and its Regional counterparts improve environmental cleanup, while protecting and strengthening the conditions of human health, the environment, and local economies.

For more information about FFRRO, please visit the office's Home Page at: **http://www.epa.gov/swerffrr**

FFRRO has formed or participates in several partnerships that facilitate faster, more effective, or less costly, cleanups. One of FFRRO's primary goals is to assist DoD, by working through EPA's Regional offices, in furthering the goals of President Clinton's Fast-Track Cleanup Program. The Fast-Track Cleanup Program accelerates cleanups and speeds the economic recovery of communities affected by closing military bases.

A major success of this program is the formation of Base Closure and Realignment Act (BRAC) cleanup teams (BCT) at 108 fast-track installations. BCTs have marked a new way of doing business for the government. The teams, which include DoD, EPA, and State agency representatives, engineer common-sense approaches to cleanups by developing common goals and priorities up front. It is estimated that, in the first 2 years of this new way of doing business, BCTs have eliminated some 90 years of cleanup process time and saved more than $100 million.

To assist further with fast-track cleanup, EPA encourages public participation by working with DoD to establish restoration advisory boards (RABs) at military installations. RABs foster teamwork by bringing members of the community together with military officials and government regulators to

discuss cleanup issues. RABs have been established at most BRAC bases, as well as at many active DoD installations nationwide. In addition to the Fast-Track Cleanup Program, EPA has formed partnerships with DOE, Department of Interior, other Federal agencies, and non-BRAC components of DoD.

To optimize the results of teamwork and partnering, FFRRO is working to develop new, streamlined approaches to dealing with problems at Federal facilities. For example, FFRRO has accelerated the cleanup of similar types of sites through its involvement in the development of "presumptive remedies." Presumptive remedies are preferred technologies for common categories of sites that are based on historical patterns of remedy selection. Their use enables site managers to limit the number of technologies considered, focus data collection, and streamline site assessment, thereby achieving time and cost savings.

"Streamlined oversight" is another process that provides nontraditional relief to resource-intensive oversight. Instead of traditional oversight methods, FFRRO supports tailoring the level of regulatory oversight at a facility to correspond with the complexity of its environmental problems. Rather than applying similar requirements for oversight to all sites, streamlined oversight applies streamlining concepts and tools to reduce time frames and save money.

Along with streamlined oversight, FFRRO works to improve the cleanup process by promoting alternative technologies for site assessment and remediation. Alternative technologies (alternatives to pump-and-treat systems and landfilling) can make cleanups faster, more effective, or less costly. Examples of alternative technologies include natural attenuation, soil venting, and land farming.

Experience has shown that cleanups improve at Federal facilities when local stakeholders share information and become involved in environmental decisionmaking. To that end, FFRRO works with numerous Federal, State, Tribal, and local governments, labor organizations, and community groups. Entities with which FFRRO currently collaborates include Citizens for Environmental Justice, the Association of State and Territorial Solid Waste Management Officials, the National Association of Attorneys General, and the International City/County Management Association.

D. OFFICE OF SITE REMEDIATION ENFORCEMENT

For more information about OSRE, please visit the office's Home Page at: **http://es.epa.gov/oeca/osre/**

The Office of Site Remediation Enforcement (OSRE) provides direction, evaluation, oversight, and assistance for remediation enforcement at sites subject to CERCLA, RCRA, Oil Pollution Act, and underground storage tank programs. OSRE provides assistance on "off-site" issues where Federal agencies are generators and/or transporters at Potentially Responsible Party (PRP) led Superfund sites (e.g., landfills) and where Federal facilities are involved in "mixed-ownership" mining issues pursuant to the General Mining Law of 1972. OSRE strives to achieve prompt site cleanup and maximum liable party participation in performing and paying for cleanup in ways that promote environmental justice and fairness. OSRE's objective is to ensure that Regions treat Federal agencies in a manner consistent with that of private sector PRPs. As such, OSRE provides assistance on a case-by-case basis to EPA's Regional offices.

E. OFFICE OF FEDERAL ACTIVITIES

> For more information about OFA, please visit the office's Home Page at: **http://es.epa.gov/oeca/ofa/**

The Office of Federal Activities (OFA) is a "sister office" to FFEO within OECA. OFA provides a central point of information for EPA, other Federal agencies, and the public on environmental impact assessment techniques and methodologies. OFA works with the Council on Environmental Quality (CEQ) on National Environmental Policy Act (NEPA) program administration and administers the filing and information system for all Federal environmental impact statements (EISs) under agreement with CEQ. For the international community, OFA is EPA's focal point on the conduct of environmental enforcement and compliance assurance.

OFA houses three major national programs:

< Review of Federal agencies' EISs and other major action under NEPA authority and Clean Air Act §309;

< Review of EPA's own compliance with NEPA and related laws, directives, and executive orders concerning special environmental areas and cultural resources; and

< Coordination of OECA's international enforcement and compliance, and environmental impact assessment programs.

OFA is organized into the NEPA Compliance Division and the International Enforcement and Compliance Division. The NEPA Compliance Division coordinates EIS reviews and is active in a number of areas ranging from DoD base closure to endangered species management. The International Enforcement and Compliance Division has ongoing coordination responsibilities with Mexico, Canada, Russia, the United Nations Conference on Environment and Development, and other international concerns.

F. FEDERAL FACILITIES LEADERSHIP COUNCIL

The Federal Facilities Leadership Council (FFLC) is a coordinating body within EPA that provides direction and leadership on EPA Federal facility cleanup efforts. The FFLC is a forum for addressing a wide spectrum of Federal facility cleanup issues, including compliance, technical, enforcement, financial budgeting, and legislative and political issues. The FFLC members include Regional program managers, BRAC national managers, Regional counsel, and EPA Headquarters managers and attorneys from FFRRO and FFEO.

G. REGIONAL FEDERAL FACILITY COORDINATORS

FFCs serve as the primary Regional points-of-contact for facility environmental managers and as vital links between EPA Headquarters and the Federal facilities. FFCs are responsible for coordinating the implementation and dissemination of FFEO policies and programs at the Regional level. Some of the required annual activities performed by FFCs to achieve compliance and promote pollution prevention are highlighted on the following page.

Coordinating with Regional Media Program Staff to Implement Federal Facilities Compliance/Enforcement Programs

< Provide clarification on Federal facilities policies and guidance, assist in compliance/ inspections activities, and coordinate multimedia inspections at Federal facilities;

< Facilitate information exchange on Federal facilities' programs and multimedia enforcement/ compliance strategies; and

< Coordinate meetings/briefings/visits between the regulated Federal facilities staff and EPA.

Managing Tracking, Oversight, and Compliance Planning Activities

< Updating the FFTS and the Integrated Data for Enforcement Analysis (IDEA) databases to include Reporting for Enforcement and Compliance Assurance Priorities (RECAP) measures;

< Maintaining records on Federal facility inspections and enforcement actions;

< Preparing briefings for the Regional Administrator on multimedia Federal facility issues;

< Ensure that Federal facilities issues are addressed in EPA/State Enforcement Agreements;

< Assist in the coordination of Dispute Resolution Packages and Early Warning Packages being forwarded to EPA Headquarters; and

< Establish a systematic and routine briefing series for Regional Administrator/Deputy Regional Administrator on Federal facility issues utilizing FFTS/IDEA data.

Managing Federal Facilities' Environmental Management Program Plans

< Coordinate the review of all Federal facility plans and programs within the Region as required by E.O. 12088;

< Conduct appropriate training for Regional staff involved in the FEDPLAN regional review process to ensure timely and technically accurate EPA review of Federal projects;

< Provide appropriate FEDPLAN training and program assistance to other Federal agencies in environmental compliance and budget planning in accordance with E.O. 12088;

< Communicate information about the FEDPLAN planning process to both the Regional office and Federal facilities; and

< During FEDPLAN reviews, analyze all open enforcement actions (using IDEA and FFTS) at each Federal facility and correlate with the installation's environmental plan. Determine whether additional programs/projects are needed or should be modified.

Providing Technical Assistance, Training, and Outreach to Federal Facilities

< Coordinate environmental management review (EMR) process at Federal facilities with facility management personnel;

< Conduct Federal facility program reviews, EMRs, and help coordinate training opportunities available to Federal facilities;

< Establish interagency forums and quarterly round table meetings and conduct annual meetings to disseminate information and discuss critical issues; and

< Assist and coordinate with Regional Program Offices the outreach, information dissemination, and implementation of E.O.s at Federal facilities.

Providing Compliance Assistance Activities

< At a minimum, participate during the in-briefing and out-briefing activities on all multimedia and significant single media inspections; and

< Participate in meetings and conferences.

Encouraging Pollution Prevention at Federal Facilities

< Coordinate Regional implementation of E.O. 12856 including working with Federal facilities on pollution prevention (P2) plan development and implementation and meeting TRI reduction goals;

< Conduct Pollution Prevention Opportunity Assessments (PPOAs) in cooperation with the Regional P2 Coordinator;

< Evaluate P2 projects reported by Federal facilities in FEDPLAN and provide information to the Regional P2 Coordinator; and

< Help Federal facilities develop P2 programs by providing information, identifying opportunities, and fostering technology sharing among Federal facilities.

By providing a contact for enforcement, compliance, and outreach activities, FFCs streamline the Federal facility compliance and enforcement process for Federal facilities and EPA Regional and Headquarters personnel. Appendix A provides addresses, mail codes, fax numbers, and E-mail addresses for each FFC.

APPENDIX A: REGIONAL FEDERAL FACILITY COORDINATORS[1]

REGION I

Anne H. Fenn
Federal Facilities Coordinator
US EPA Region I
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REGION II

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US EPA Region II
Compliance Assistance Section
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FAX: 212-637-4086
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REGION III

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Environmental Programs Branch
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FAX: 215-814-2783
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Jeff Pike
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FAX: 215-814-3163
E-Mail: pike.jeff@epa.gov

REGION IV

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FAX: 404-562-9598
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REGION V

Lee Regner
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REGION VI

Joyce Stubblefield
Federal Facilities Coordinator
US EPA Region VI
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FAX: 214-665-7446
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REGION VII

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Federal Facilities Coordinator
US EPA Region VII
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[1]This list of Federal Facility Coordinators is current as of December 1999. Information contained in this list changes periodically.

APPENDIX A: REGIONAL FEDERAL FACILITY COORDINATORS
(continued)

REGION VIII

Dianne Thiel
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Connally Mears
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REGION IX

Sara Segal
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US EPA Region IX
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REGION X

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APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT

U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

July 16, 1997

MEMORANDUM FOR:

JONATHAN Z. CANNON
GENERAL COUNSEL
ENVIRONMENTAL PROTECTION AGENCY

JUDITH A. MILLER
GENERAL COUNSEL
DEPARTMENT OF DEFENSE

From: Dawn E. Johnsen
Acting Assistant Attorney General
Office of Legal Counsel

Re: Administrative Assessment of Civil Penalties
Against Federal Agencies Under the Clean Air Act

You have asked for our opinion resolving a dispute between the Environmental Protection Agency ("EPA") and the Department of Defense ("DOD") concerning whether the Clean Air Act ("the Act"), 42 U.S.C. §§ 7401-7671q (1994), authorizes EPA administratively to assess civil penalties against federal agencies for violations of the Act or its implementing regulations, and if so, whether this authority can be exercised consistent with the Constitution.[1] Applying the "clear statement" rule of statutory construction, which is applicable where a particular interpretation or application of an Act of Congress would raise separation of powers

[1] See Letter for Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, from Jonathan Z. Cannon, Assistant Administrator (General Counsel). EPA (Oct. 3, 1995), enclosing Memorandum on Assessment of Administrative Penalties Against Federal Facilities under the Clean Air Act (Sept. 11, 1995) ("EPA Memorandum"); Letter for Walter Dellinger from Judith A. Miller, General Counsel, DOD (Dec. 15, 1995), enclosing DOD Response Memorandum: Assessment of Administrative Penalties Against Executive Branch Agencies Under Section 113(d) of the Clean Air Act (Dec. 15, 1995) ("DOD Response"); Letter for Christopher Schroeder, Acting Assistant Attorney General, Office of Legal Counsel, from Jonathan Z. Cannon (Oct. 18, 1996), enclosing EPA Memorandum in Reply to Department of Defense Concerning Administrative Assessment of Civil Penalties Against Federal Facilities Under the Clean Air Act (Sept. 16, 1996) ("EPA Reply").

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

concerns, we conclude that the Act does provide EPA such authority. We also conclude that these separation of powers concerns do not bar EPA's exercise of this authority because it can be exercised consistent with the Constitution.

I.

A.

EPA's authority to initiate enforcement proceedings under the Clean Air Act is set forth in section 113 of the Act, entitled "Federal Enforcement," 42 U.S.C. § 7413 (1994). As summarized in section 113(a)(3).[2] Section 113 provides that when EPA finds that "any person has violated, or is in violation of "the Act or its implementing regulations. EPA may issue an administrative penalty order or a compliance order, bring a civil action, or request the Attorney General to commence a criminal action. The questions presented to us are whether the Act authorizes EPA to issue an administrative penalty order to a federal agency under section 113(d), and if so, whether that authority can be exercised consistent with the Constitution.[3]

The Act authorizes EPA to issue two kinds of administrative penalty orders. Section 113(d)(1) authorizes EPA to "issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation" when EPA "finds that such person" has violated the Act or its implementing regulations. 42 U.S.C. § 7413(d)(1) (1994). Such a penalty may be assessed only after opportunity for a hearing on the record in accordance with the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 554, 556 (1994). Id. § 7413(d)(2).

In addition, section 113(d)(3) authorizes EPA to implement a field citation program under which "persons" who commit minor violations of the Act or the regulations may receive field citations assessing civil penalties not to exceed $5,000 per day. Id. § 7413(d)(3). Field citations may be issued without a hearing, but persons who have received citations may request a hearing. "Such hearing shall not be subject to [the APA], but shall provide a reasonable opportunity to be heard and to present evidence." Id. The Act provides for the two types of administrative penalty orders to be litigated in the courts in

[2] See 42 U.S.C. § 7413(a)(3) (1994) (where it finds a violation, EPA may "(A) issue an administrative penalty order in accordance with subsection (d) of this section. (B) issue an order requiring such person to comply with such requirement or prohibition. (C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or (D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section").

[3] We intend that our resolution of the questions concerning section 113(d) will also apply to the comparable authority provided to EPA with respect to mobile sources by sections 205(c) and 211(d)(1) of the Act, 42 U.S.C. §§ 7524(c), 7545(d)(1) (1994). See EPA Memorandum at 2-3.

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

a variety of ways. Persons against whom either kind of penalty is imposed may seek judicial review in federal district court, and in any such proceeding the United States may seek an order requiring that the penalties be paid. Id. § 7413(d)(4). In addition, if a person fails to pay any penalty after receiving an order or assessment from EPA, "the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed." Id. § 7413(d)(5).

B.

EPA presents a straightforward position that section 113(d) authorizes EPA to assess administrative penalties against federal agencies. That subsection authorizes EPA to assess penalties against "persons." Although the term "person" is not defined in section 113, which is the Act's federal enforcement section, the term is defined in the Act's general definitions section, section 302(e), which provides that the term includes "any agency, department, or instrumentality of the United States and any officer, agent or employee thereof." 42 U.S.C. § 7602(e) (1994). EPA concludes that "[s]ince federal facilities expressly fall within the Act's definition of person, [section 113(d)] unambiguously demonstrate[s] that EPA has authority to issue administrative penalties against federal facilities." EPA Memorandum at 3.

DOD argues in response that EPA's interpretation could raise significant separation of powers concerns, because it would authorize civil litigation proceedings between federal agencies, and therefore it can be adopted only if there is an express statement of congressional intent to provide such authority that is sufficient to meet the high standard applied by the courts and this Office with respect to statutory interpretation questions involving separation of powers concerns.[4] DOD argues that "[s]ection 113(d) fails to provide clear and express authority for EPA to impose administrative penalties against Executive Branch agencies." DOD Response at 4. DOD rejects EPA's argument that the inclusion of federal agencies in the Act's general definition of "person" constitutes "a sufficiently express statement to allow [EPA] to exercise enforcement authority against other Executive Branch agencies." Id. at 5.

II.

We agree with DOD that the interpretation of the Clean Air Act advanced by EPA -- that EPA is authorized to initiate enforcement proceedings under section 113(d) against federal agencies -- raises substantial separation of powers concerns, thus warranting

[4] See DOD Response at 4 ("The assessment of administrative penalties against Executive Branch agencies by EPA is based on a statutory scheme that contemplates Judicial intervention into what should be a purely Executive Branch function, thus raising significant constitutional separation of powers concerns, warranting the high standard of review."), citing Memorandum for James S. Gilliland, General Counsel, Department of Agriculture, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Enforcement Proceedings Against Executive Branch Agencies under the Fair Housing Act (May 17, 1994) ("Fair Housing Act Opinion").

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

application of the clear statement principle.

In 1994, this Office was asked whether the Department of Housing and Urban Development ("HUD") has the authority under the Fair Housing Act to initiate enforcement proceedings against other federal agencies. We concluded that such an interpretation of the Fair Housing Act would raise substantial separation of powers concerns "relat[ing] to both the President's authority under Article II of the Constitution to supervise and direct executive branch agencies and the Article III limitation that the jurisdiction of the federal courts extends only to actual cases and controversies." Fair Housing Act Opinion, at 6. We stated that "[w]ith respect to the Article III issue, this Office has consistently said that 'lawsuits between two federal agencies are not generally justiciable.'" id. (quoting Constitutionality of Nuclear Regulatory Commission's Imposition of Civil Penalties on the Air Force, 13 Op. O.L.C. 131, 138 (1989) ("NRC Opinion")), and that "[w]ith respect to Article II, we have indicated that construing a statue to authorize an executive branch agency to obtain judicial resolution of a dispute with another executive branch agency implicates 'the President's authority under Article II of the Constitution to supervise his subordinates and resolve disputes among them . . . .'" Fair Housing Act Opinion, at 6-7 (quoting Review of Final Order in Alien Employer Sanctions Cases, 13 Op. O.L.C. 370, 371 (1989)).

We observed in our Fair Housing Act opinion that these separation of powers concerns

> are the essential backdrop for our analysis of whether the Fair Housing Act authorizes HUD to initiate enforcement proceedings against other executive branch agencies. Like the Supreme Court, we are "loath to conclude that Congress intended to press ahead into dangerous constitutional thickets in the absence of firm evidence that it courted those perils."

Id. at 7 (quoting Public Citizen v. Department of Justice, 491 U.S. 440, 466 (1989)). Accordingly, we applied a clear statement rule and concluded that the statute did not provide HUD this authority:

> Applying the standard the Supreme Court has used when a particular interpretation or application of an Act of Congress would raise separation of powers or federalism concerns, we believe that because substantial separation of powers concerns would be raised by construing the Act to authorize HUD to initiate enforcement proceedings against other executive branch agencies, we cannot so construe the Act unless it contains an express statement that Congress intended HUD to have such authority. Because the Act does not contain such an express statement, we conclude that it does not grant HUD this authority.

Id. at 1.

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

Our insistence in the Fair Housing Act Opinion that the statute must "contain[] an express statement that Congress intended HUD to have such authority" was consistent with a long line of opinions of the Supreme Court and this Office that require a clear statement of congressional intent when separation of powers or federalism concerns would be raised. Many of these opinions are cited in an opinion that we issued subsequent to the Fair Housing Act Opinion. See Memorandum for Jack Quinn, Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Application of 28 U.S.C. §458 to Presidential Appointments of Federal Judges (Dec. 18, 1995) (concluding that 28 U.S.C. §458 (1994), which prohibits appointment or employment of relatives of judges in same court, does not apply to presidential appointments of judges). We stated in that opinion that "[g]iven the central position that the doctrines of federalism and separation of powers occupy in the Constitution's design, [the clear statement rule] serves to 'assure[] that the legislature has in fact faced, and intended to bring into issue, the critical matters' of the balance of power between the three branches of the federal government, in the context of separation of powers, and between the federal and state governments, in the context of federalism." Id. at 4 (quoting Gregory v. Ashcroft, 501 U.S. 452, 461 (1991)). See also Will v. Michigan Dep't of State Police, 491 U.S. 58, 65 (1989); United States v. Bass, 404 U.S. 336, 349 (1971)).

III.

Based on the foregoing discussion, we must find a clear statement of congressional intent before we can conclude that the Clean Air Act authorizes EPA to initiate enforcement proceedings against other executive branch agencies. As discussed below, we believe that the statutory text provides a very strong basis for finding a clear statement of such intent and that this conclusion is fully supported by the legislative history of the Act, particularly the 1977 amendment of the definition of "person" to include federal agencies.

A straightforward review of the relevant provisions of the Clean Air Act's statutory text supports EPA's position that the statute gives EPA authority to assess civil penalties against federal agencies administratively. EPA's authority under section 113(d) is available with respect to "persons" who violate the Act.[5] The term "person" is defined in section 302(e): "When used in [the Clean Air Act] . . . [t]he term 'person' includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent,

[5] Section 113(d)(1) provides for assessment of civil penalties against "persons": "The Administrator may issue an administrative order against any person . . . ." 42 U.S.C. § 7413(d)(1) (1994). Section 113(d)(3) achieves the same result, but uses indirect language: "The Administrator may implement . . . a field citation program . . . [under] which field citations . . . may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may . . . elect to pay the penalty assessment or to request a hearing on the field citation." Id. § 7413(d)(3). The plain language of these provisions refutes DOD's position that this language "cannot fairly be read to constitute an affirmative grant of authority to issue a field citation against 'any person.'" DOD Response at 5.

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

or employee thereof." 42 U.S.C. § 7602(e) (1994) (emphasis added).

EPA rests its argument on the plain meaning of these two provisions. EPA does so with good justification, because read together sections 113(d) and 302(e) expressly provide that EPA may issue administrative penalty assessments against federal agencies. We have also reviewed the evolution of the relevant provisions of the Clean Air Act as reflected by various amendments to the Act over the years. As discussed below, that history fully supports the conclusion that Congress contemplated EPA enforcement against other federal agencies.

The administrative enforcement provisions set forth in section 113(d) were enacted as part of the Clean Air Act Amendments of 1990 ("the 1990 Amendments"), Pub. L. No. 101-549, § 701, 104 Stat. 2399, 2677-79. We have reviewed the legislative history of the 1990 Amendments and have found no discussion of the application of those provisions to federal agencies. We have not limited our legislative history review to the 1990 Amendments, however, because the administrative enforcement authorities provided by those amendments merely supplemented the enforcement authorities EPA already had with respect to "persons" under the other provisions of section 113. Thus, Congress's intent in providing EPA those other authorities is controlling.

EPA's other enforcement authorities under section 113 originated with the Clean Air Act Amendments of 1970 ("the 1970 Amendments"), Pub. L. No. 91-604, § 4(a), 84 Stat. 1676, 1686-87. As with the current version of section 113, the 1970 version authorized federal enforcement against "persons." However, at that time the Act's definition of "person" did not include agencies of the federal government.[6] The 1970 Amendments also revised section 118 of the Act to make federal agencies subject to the substantive requirements of the Act: "[Federal agencies] shall comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements." Id. § 5, 84 Stat. at 1689.[7] Thus, the 1970 version of section 118 referred only to federal agencies complying with substantive requirements; it did not contain any language subjecting federal agencies to enforcement authority.

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[6] "Person" was limited to "an individual, corporation, partnership, association, State, municipality, and political subdivision of a State." Pub. L. No. 88-206, § 9(c), 77 Stat. 392, 400 (1963).

[7] The previous version of section 118, enacted in 1959, merely requested federal agencies to "cooperate" with air pollution enforcement control agencies. See Act of Sept. 22, 1959 ("the 1959 Amendments"), Pub. L. No. 86-365, § 2, 73 Stat. 646 ("It is hereby declared to be the intent of the Congress that any Federal department or agency . . . shall, to the extent practicable and consistent with the interests of the United States and within any available appropriations, cooperate with the Department of Health, Education, and Welfare, and with any interstate agency or any State or local government air pollution control agency in preventing or controlling the pollution of the air . . . .").

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

In 1977, the definition of "person" was expanded to include "any agency, department, or instrumentality of the United States." Clean Air Act Amendments of 1977 ("the 1977 Amendments"), Pub. L. No. 95-95, § 301(b), 91 Stat. 685, 770. This amendment was contained in the House-passed version of the 1977 Amendments, which was accepted by the conference committee. See H.R. 6161, § 113(d), 95th Cong., 1st Sess. (1977) ("House Bill"); H.R. Conf. Rep. No. 95-564, at 137, 172 (1977), reprinted in 1977 U.S.C.C.A.N. 1502, 1517-18, 1552-53. The committee report accompanying the House bill expressly stated that the specific purpose of the expansion of the definition of "person" was to make it clear that section 113 enforcement was available with respect to federal agencies:

> Finally, in defining the term "person" for the purpose of section 113 of the act to include Federal agencies, departments, instrumentalities, officers, agents, or employees, the committee is expressing its unambiguous intent that the enforcement authorities of section 113 may be used to insure compliance and/or to impose sanctions against any Federal violator of the act.

H.R. Rep. No. 95-294, at 200 (1977), reprinted in 1977 U.S.C.C.A.N. 1077, 1279 ("House Report").[8]

In some, the expansion of the definition of "person" to include federal agencies, together with the statement in the House Report that the definitional change was for the express purpose of subjecting federal agencies to EPA enforcement under section 113, leave no room for doubt that Congress clearly indicated in 1977 its intent to authorize EPA to use its section 113 enforcement authorities against federal agencies.

IV.

EPA takes the position that its authority under the Clean Air Act to assess civil penalties against federal agencies administratively can be exercised consistent with Articles II and III of the Constitution. EPA bases its position on the view that the Act

> provides sufficient discretion to the affected parties so that complete resolution of the dispute may occur within the Executive Branch, up to and including referral to the President of any issues that are not otherwise resolved, and the President is not deprived of his opportunity to review the matter in dispute.

EPA Memorandum at 1. We agree with EPA's position. We will discuss the Article II and Article III issues separately.

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[8] The quotation from the House Report indicates that the House Bill "defin[ed] the term 'person' for the purpose of section 113." The House Bill accomplished that purpose by amending the Act's general definition of "person," not by creating a special definition applicable only to section 113. See H.R. 6161. supra. § 113(d).

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

A.

EPA asserts that it can exercise its administrative enforcement authority under the Act in a way that is consistent with the President's supervisory authority under Article II. EPA emphasizes that the Act

> provides a federal facility with the right to a hearing before final assessment of a penalty, and therefore . . . provides federal facilities with sufficient opportunity to raise any dispute to the President where considered appropriate. Nothing in the Act would prevent a federal facility from exercising this opportunity to raise any dispute to the President.

Id. at 5 (footnote omitted). Nor are federal agencies limited to using the hearing process to raise a dispute to the appropriate level within the executive branch: federal agencies will have the opportunity to consult with the EPA Administrator before any assessment is final, see id., and the Attorney General could seek to resolve the matter if either EPA or the respondent federal agency sought to litigate the matter, see id., at 6.

The critical point for constitutional purposes is that the Act does not preclude the President from authorizing any process he chooses to resolve disputes between EPA and other federal agencies regarding the assessment of administrative penalties. "[I]t is not inconsistent with the Constitution for an executive agency to impose a penalty on another executive agency pursuant to its statutory authority so long as the President is not deprived of his opportunity to review the matter." NRC Opinion, 13 Op. O.L.C. at 136-37.

DOD attempts to distinguish our NRC Opinion, which concluded that the administrative enforcement authority of the Nuclear Regulatory Commission ("NRC") under the Atomic Energy Act, see 42 U.S.C. § 2282 (1994), could be exercised against federal agencies consistent with Article II. DOD suggests that the statutory regimes are different, arguing principally that they differ with respect to the Attorney General's authority to resolve a dispute. It notes that the Atomic Energy Act contains an express authorization to the Attorney General, in circumstances where the NRC has requested that the Attorney General institute a civil action to collect a penalty, "to compromise, mitigate, or remit such civil penalties." 42 U.S.C. § 2282(c) (1994). See DOD Memorandum at 10-11. DOD then asserts that the Clean Air Act is different because it "limits the discretion of the Attorney General to compromise, mitigate or remit a penalty assessment." Id. DOD apparently bases that assertion on the language in section 113(d)(5) stating that in any civil action "the validity, amount, and appropriateness of such order or assessment shall not be subject to review." 42 U.S.C. § 7413(d)(5) (1994).

DOD's assertion that the Clean Air Act limits the Attorney General's discretion is incorrect. Section 113(d)(5) acts as a limitation only on the authority of the courts in any action that is brought before the courts. It is not a limitation on the Attorney General, acting

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

under Executive Order 12146 or any litigation review process, or -- more to the point -- the President acting through whatever executive branch process he may authorize. The absence of any limitation on the President's discretion is the dispositive factor for constitutional purposes, and in that respect the two statutory regimes are the same. Neither statute precludes resolution within the executive branch, including resolution by the President, of disputes between the enforcement agency and other federal agencies.[9]

B.

EPA acknowledges that the civil action provisions contained in sections 113(d)(4) and 113(d)(5) of the Act, see 42 U.S.C. §§ 7413(d)(4), 7413(d)(5) (1994), "raise the possibility of one executive branch agency suing another in federal court over the administrative penalty, "EPA Memorandum at 9, but it takes the position that "[t]he constitutional concerns ... could be avoided by an interpretation that the general reference to review in federal district court reasonably means only judicial review that was otherwise constitutional." Id. In particular, EPA emphasizes that "nothing in the Clean Air Act mandates that two executive branch agencies end up in federal court. There is at most an opportunity for an agency to seek judicial review, and a requirement that EPA 'request' that the Attorney General file a collection action." Id. EPA concludes that "the mere possibility that an interagency lawsuit might result does not invalidate an agency's ability to assess civil penalties against another executive branch agency, where the Attorney General has adequate discretion to control the filing of such a lawsuit." Id. at 10.

As stated in Section II of this opinion, "this Office has consistently said that 'lawsuits between two federal agencies are not generally justiciable.'" Fair Housing Act Opinion, at 6 (quoting NRC Opinion, 13 Op. O.L.C. at 138). "We have reasoned that federal courts may adjudicate only actual cases and controversies, that a lawsuit involving the same person as both plaintiff and defendant does not constitute an actual controversy, and that this principle applies to suits between two agencies of the executive branch." Id. We agree with EPA, however, that this Article III barrier to use of the civil action remedies of section 113(d) is not a barrier to EPA's exercise of its administrative enforcement authority under the Act. Put another way, we agree that the administrative authority can be exercised consistent with Article III. The Act does not require that civil actions be brought in the event of a dispute of an assessment by EPA; it merely authorizes the bringing of such actions.

[9] Nor does the Clean Air Act's citizen suit provision operate to preclude resolution within the executive branch. Section 304 provides that "any person may commence a civil action on his own behalf . . . against any person (including . . . the United States . . .) who is alleged . . . to be in violation of . . . (B) an order issued by [EPA] . . . with respect to [an omission] standard or limitation" under the Act. 42 U.S.C. § 7604(a)(1) (1994). The filing of a citizen suit during the pendency of a dispute between EPA and a federal agency would not prevent the President from directing EPA to suspend, withdraw or modify the order it had issued to the agency. Such direction could be provided specifically in individual cases or generally by operation of a standing directive setting forth procedures for resolution of enforcement proceedings under section 113.

APPENDIX B: ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AGAINST FACILITIES UNDER THE CLEAN AIR ACT (continued)

Thus, as is the case with the comparable enforcement provisions contained in the Atomic Energy Act, which we concluded in our NRC opinion could be applied consistent with Article III, "this constitutional issue need not arise, because the framework of the Act clearly permits [a] dispute over civil penalties to be resolved within the executive branch, and without recourse to the judiciary." NRC Opinion, 13 Op. O.L.C. at 141.[10] To the extent that the civil action provisions of the two statutes are parallel, in that the Attorney General rather than the enforcement agency has control over whether to bring the civil action, our analysis in the NRC Opinion is directly controlling here:

> It is therefore clear that the Attorney General may exercise [her] discretion to ensure that no lawsuits are filed by [EPA] against other agencies of the executive branch. If the Attorney General and the President determine that no civil penalties should be collected, the Attorney General may simply refrain from bringing a lawsuit. If the Attorney General determines that certain civil penalties are appropriate, however, the Attorney General would still not bring a lawsuit because of the constitutional problems noted above. Rather, procedures internal to the executive branch are adequate to resolve the dispute through the determination that [the federal agency responsible for the federal facility] is liable.

Id. at 143.

The only difference between the two statutes that is relevant to the Article III question is that section 113(d)(4) of the Clean Air Act would also authorize the agency responsible for the federal facility to initiate a civil action to contest an EPA administrative order. See 42 U.S.C. § 7413(d)(4) (1994). The difference is not significant for constitutional purposes, however, because, as we have explained, the Act is permissive only and does not require any federal agency to bring a civil action. Moreover, the Attorney General and the President possess the authority to forestall litigation between executive branch entities. The Attorney General is responsible for conducting litigation on behalf of most federal agencies and therefore can ensure that no civil action is filed by those agencies against another federal entity. We would expect that the relatively few federal agencies that have relevant independent litigating authority similarly would decline to file civil actions, consistent with the conclusions set forth in this memorandum. In any event, the President could direct the agency head not to bring an action or to withdraw any action that might be filed.

[10] See also id. At 143 ("We thus conclude that a lawsuit between two agencies of the executive branch would involve substantial constitutional problems, but that the statutory scheme permits resolution of the interagency dispute within the executive branch.").

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA)

MEMORANDUM

SUBJECT: Guidance on Implementation of EPA's Penalty/Compliance Order Authority Against Federal Agencies Under the Clean Air Act (CAA)

FROM: Steven Herman
Assistant Administrator

TO: Regional Counsels, Regions I-X
Air Program Directors, Regions I-X

I. INTRODUCTION

The Clean Air Act (CAA or Act) contains several provisions authorizing the Agency to assess administrative civil penalties[1] and to issue administrative compliance orders[2] for violations of the Act and its implementing regulations. These provisions also authorize the Agency to assess administrative civil penalties or issue compliance orders against Federal agencies. This guidance will assist in the implementation of the CAA's administrative penalty authority and compliance order authority when used against a Federal agency.

II. BACKGROUND

In response to a proposed rulemaking concerning CAA field citations (under section 113(d)(3) of the Act), the Department of Defense took the position that EPA did not have authority to issue citations against a Federal agency. To resolve this issue, EPA sought the opinion of the Office of Legal Counsel (OLC) in the Department of Justice (DOJ). The OLC is the office within the Department of Justice (DOJ) that settles legal disputes between Executive Branch agencies pursuant to Executive Order No.12146. On July 16, 1997, OLC issued an opinion confirming EPA's authority to assess administrative penalties against Federal agencies

[1] CAA sections 113(d), 205(c), 211(d)(1) and 213(d), 42 U.S.C. §§ 7413(d), 7424(c), 7545(d)(1), and 7547(d).

[2] 42 U.S.C. § 7413(a).

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

under the CAA, including field citations.[3] See attached opinion. DOJ applied a "clear statement" rule of statutory construction, and determined that these provisions authorize the Agency to assess administrative penalties against Federal agencies, and that separation of powers concerns do not bar EPA from exercising this authority.[4]

III. CAA ADMINISTRATIVE PENALTY ACTIONS

A. Hearing Procedures/Settlement

The hearing procedures set forth at 40 C.F.R. Part 22 apply when EPA issues a penalty order against Federal agencies in the same manner as when EPA files an administrative action against private parties. Private parties and Federal agencies have an opportunity to challenge a CAA penalty complaint using the 40 C.F.R. Part 22 procedures. For instance, if the Region files an administrative penalty action against a Federal agency under CAA section 113(d)(1), EPA would file pursuant to EPA's procedural rules in Part 22. Under the Part 22 procedures, service

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[3] While the OLC decision does not expressly address EPA's penalty authority under Section 213(d), EPA believes the same analysis applies to that provision.

[4] This authority can be exercised consistent with Articles II and III of the Constitution. For example, the Act does not preclude the President from authorizing any process he chooses to resolve disputes between EPA and other Federal agencies over assessment of administrative penalties. DOJ noted that nothing in the Act prevented, and EPA intended to provide, a Federal agency with an opportunity to confer with the Administrator before any assessment is final.

Congress has addressed this issue of providing such an opportunity to confer under other environmental statutes. In the 1992 amendments to RCRA, Congress provided that "[n]o administrative order issued to such department, agency, or instrumentality shall become final until such...agency...has had the opportunity to confer with the Administrator." This concerned both penalty and compliance orders. 42 U.S.C. § 6961(b)(2). A similar provision was adopted in the 1996 amendments to the Safe Drinking Water Act concerning administrative penalties. 42 U.S.C. § 300j-6(b).

In response to the 1992 RCRA amendments, EPA revised its hearing procedures to provide the opportunity to confer. 40 C.F.R. § 22.37(g). This provided an opportunity to confer at the end of the administrative hearing process. EPA recently proposed to revise the Part 22 hearing procedures so that this same regulatory approach for an opportunity to confer would apply generally to administrative hearings under Part 22 involving Federal agencies. 63. Fed. Reg. 9464, 9476, 9491 (February 25, 1998).

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

on an officer or agency of the United States can be accomplished in several ways. For example, as a matter of practice, EPA has successfully served the base commander when a military service is involved with a copy of the action to that service's headquarters. If the case proceeded to hearing, it would be conducted in the same manner as a case against a private party.

Settlement with a Federal agency is encouraged in the same circumstances as with a private party. See 40 C.F.R. § 22.18. EPA should use the same conference and settlement discussion procedures with Federal agencies that it uses with private parties under Part 22. Except where the parties have reached a settlement, a case against a Federal agency would proceed to hearing under the provisions of Part 22 just as in a case against a private party, including the opportunity for either party to appeal an initial decision to the Environmental Appeals Board. Often, however, settlement discussions continue on a parallel track with the hearing procedures. Cases that settle do not require a conference with the Administrator, as discussed below. In settling a matter, the respondent Federal agency waives its opportunity to confer on the settled matter.

As with private parties, any voluntary resolution or settlement of such an action shall be set forth in a consent agreement/consent order. In addition, Federal parties have the same opportunity to confer with the appropriate Agency official or employee provided under 40 C.F.R. § 22.18. Regions should not confer with the Federal agency outside of their usual procedures to implement 40 C.F.R. § 22.18. As a result, after EPA issues the complaint, the respondent Federal agency may confer with the complainant (EPA employee authorized to issue the complaint) under Part 22 concerning settlement whether or not the respondent requests a hearing. This Part 22 opportunity to confer, however, does not affect the 30-day deadline for filing an answer under § 22.43, just as with a private party under § 22.18(a). Moreover, throughout this administrative process, the Regions should follow Part 22's requirements regarding ex parte communications.

B. Opportunity to Confer[5]

Before a penalty becomes final, the respondent Federal agency must be afforded an opportunity to confer with the Administrator. EPA will provide the same opportunity to confer with the Administrator prior to final assessment of a CAA administrative penalty as is currently provided in implementing the RCRA provision, and as proposed in general for Part 22. Although the "opportunity to confer" requirement can be satisfied by providing an opportunity to

[5]EPA believes this guidance is consistent with Executive Order No. 12088, as it establishes an efficient and orderly procedure for implementing an opportunity for the head of the affected Federal agency to confer with the Administrator on disputed issues.

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

confer with a Regional official with properly delegated authority within a reasonable period of time following issuance of the penalty order, as a matter of practice, the Administrator will retain the opportunity to confer personally, as set out below. This is an appropriate way to implement EPA's existing administrative penalty authority, thereby preserving the President's authority to resolve disputes within the executive branch. As a result, EPA will provide the respondent Federal agency an opportunity to confer with the Administrator before a penalty order becomes final.[6]

Federal agencies will have the opportunity to meet with the Administrator only after exhaustion of other Part 22 procedures. Placing the conference at the end of the process will enable the Agency to proceed with their enforcement case against the Federal agency in the same manner as they do against private parties. Similarly, placing the conference at the end of the hearing process was adopted in implementing the RCRA provision noted above, and has worked effectively in practice. See 58 Fed. Reg. 49044 (September 21, 1993).

Under the current Part 22 provisions, the EAB issues a final order under section 22.31, and sets the effective date of the order. A private party or a Federal agency may seek reconsideration of the order by filing a motion with the EAB, and the EAB may, if appropriate, stay the effective date of the final order pending such reconsideration. However, the Administrator does not participate in a case unless the matter has been referred by the EAB to the Administrator under section 22.04(a).

In cases involving a respondent Federal agency, the EAB will issue a final order under section 22.31, with an effective date that is no earlier than 30 days from issuance of the order. If a Federal agency wishes to confer with the Administrator, it must file a motion to reconsider the EAB's final order with the EAB under section 22.32 within 10 days of service of the EAB's final order (5 additional days where service is by mail). In its motion, the Federal agency must indicate that it desires an opportunity to confer with the Administrator, either in person or through an exchange of letters, and identify the issues which the Federal agency proposes to discuss with the Administrator. The motion to reconsider should also raise to the EAB any matters deemed to have been erroneously decided and the nature of the alleged errors. Upon receipt of such a request, the EAB will refer the request for a conference to the Administrator and

[6]As discussed below, such opportunity will not be available for administrative penalty orders unless the Part 22 administrative hearing procedures have been exhausted.

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

stay the effective date of its final order pending the outcome of the referral and conference with the Administrator.[7]

The referral from the EAB pursuant to section 22.04(a) will authorize the Administrator, upon completion of the conference, to either issue a final order superseding the EAB's order, or refer the matter back to the EAB to issue a new final order or reaffirm its previous order on behalf of the Agency. If the matter is referred back to the EAB, the EAB shall resolve, as necessary, those issues raised in the motion for reconsideration relating to any errors allegedly made by the EAB.

Failure to request a conference with the Administrator in this manner and within this time frame will be deemed a waiver of the right to confer with the Administrator. If there is no timely request for a conference with the Administrator, any motion to reconsider filed with the EAB will be ruled on by the EAB.

The conference with the Administrator can occur directly or through an exchange of letters. A request for a direct conference should be included in the Federal agency's motion for reconsideration of the EAB's final order with a copy to the Director of the Federal Facilities Enforcement Office (FFEO) and all parties/counsel of record.[8] The request for a direct conference should specifically identify the issues which the Federal agency proposes to discuss with the Administrator, and should specifically identify who will represent the respondent Federal agency. In addition, as part of its request for a direct conference, the head of the Federal agency should attach copies of all prior administrative decisions and substantive briefs in the underlying proceedings. Copies of these briefs and underlying decisions also should be provided to the Director of FFEO.

The parties/counsel of record may request to be present during the direct conference. A request to attend the direct conference should be in writing and served on the Director of FFEO and the parties/counsel of record. The Administrator or her designee shall notify the head of the

[7]Under the proposed Part 22 procedures, if the respondent Federal agency desires a conference with the Administrator, the head of the affected Federal agency must request a conference with the Administrator within 30 days of the EAB's service of a final order and serve that request on the parties of record. In that event, a decision by the Administrator shall become the final order. A motion for reconsideration of a final order shall not stay the 30-day period to request the conference unless specifically so ordered by the EAB.

[8]Participation by non-Federal parties in the Administrator's conference will be determined on a case-by-case basis.

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

Federal agency who requested the direct conference and the parties/counsel of record regarding her plan and arrangements for the direct conference.

Following the conclusion of the direct conference, a person designated by the Administrator will provide a written summary of the issues discussed and addressed. Copies of the written summary shall be provided to the parties/counsel of record. Within thirty (30) days of the conference, the Administrator shall issue a written decision with appropriate instruction regarding the finality of the order. This decision shall be filed with the Clerk of the EAB and made part of the administrative case file.

Instead of the direct conference, the conference with the Administrator may be conducted through an exchange of letters. If so, the head of the Federal agency should include the letter in its motion for reconsideration of the EAB's final order with a copy to the Director of FFEO and all parties/counsel of record. In addition, the letter should specifically identify the issues which the Federal agency proposes that the Administrator consider. The head of the Federal agency should also attach copies of all prior administrative decisions and substantive briefs in the underlying proceedings. Copies of these briefs and underlying decisions should be provided to the Director of FFEO. Within thirty (30) days of receipt of the head of the Federal agency's letter in the event of a conference by letter, the Administrator shall issue a written decision with appropriate instruction regarding the finality of the order. As in the direct conference, this decision shall be filed with the Clerk of the EAB and made part of the Administrative case file.

If the Board referred the matter to the Administrator for decision under section 22.04(a) prior to the filing of a motion to reconsider under section 22.32, and if the Federal agency wants to request a conference with the Administrator, it must do so prior to the Administrator's decision. To assure that Federal agencies are aware of these procedures, Regions should refer the Federal agency to Part 22 and other relevant Agency guidance.

IV. COMPLIANCE ORDERS

Unlike RCRA, the CAA does not have a separate statutory provision specifically addressing Federal agency penalty/compliance orders and requiring a conference with the Administrator prior to an order's becoming effective. The CAA, however, does provide a general conference opportunity under section 113(a)(4), prior to a compliance order's becoming

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

effective.[9] CAA compliance orders to Federal agencies should follow the same procedures as for the issuance of such orders to private parties. For example, as with a private party, a Federal agency respondent should be provided an opportunity to confer with a Regional official with the authority to issue a compliance order before the order becomes effective. Because EPA issues a compliance order to achieve expeditious compliance with CAA requirements and not to assess a penalty, the time period to request a conference generally should be less than the 30 days afforded to seek a conference for penalty orders. Ultimately, based on the seriousness of the violations and the nature of the compliance activities, the Regional office will determine the time period in which the Federal agency may request a conference, and specify that deadline in the cover letter transmitting the compliance order or in the compliance order itself. The approach of providing an opportunity to confer before a compliance order becomes final has worked well under the Safe Drinking Water Act.

With regard to section 113 compliance orders, section 113 mandates that such orders require the person to whom it was issued to comply within one year of the date the order was issued, and shall be nonrenewable. For private parties, EPA would most likely pursue a civil judicial action against a violator should a schedule longer than a year be required for a return to compliance. For executive branch agencies, this option is not available to EPA. Therefore, when a Region believes that a schedule less than a year is infeasible to achieve compliance, the Region should negotiate a Federal Facility Compliance Agreement (FFCA) which either contains an order with a delayed issuance date to go into effect when compliance can be reached in one year or, instead, the Region could first negotiate an FFCA and then issue a separate order when compliance can be reached within one year. FFEO strongly recommends that when the Region uses the FFCA, it be submitted for public comment via publication in the Federal Register in order to ensure public awareness of the compliance order's contents. This is similar to public comment on judicial consent decrees. Where compliance is achievable within one year of issuance, Regions should issue orders.

V. WAIVERS

Under the CAA Section 113(d)(1)(C), the Administrator's administrative penalty authority is limited to matters where the total penalty sought does not exceed $220,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for

[9]As a matter of practice, while EPA will also provide such opportunity to Federal agencies for compliance orders relating to violations of CAA section 112, 42 U.S.C. § 7412, the opportunity for a conference does not suggest that the Federal agency may delay taking steps to come into compliance with these requirements or any other requirements under the CAA.

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

administrative penalty action. Where the Regions determine that a waiver should be granted in an action against a Federal agency, the Regions should direct their request for a waiver to the Director, FFEO with a copy to the Director, Air Enforcement Division, Office of Regulatory Enforcement. Waiver requests should follow the same format as similar requests in cases against private parties and include reasons justifying the waiver and a fact sheet on the matter.

VI. PENALTIES

Federal agencies are liable for EPA-assessed CAA civil administrative penalties just like any other person. [10] If violations occurred prior to July 16, 1997 and are ongoing, EPA could assess penalties for the violations from July 16, 1997 until correction of the violation. Moreover, EPA can require correction of and, in some case, may seek penalties for violations that occurred prior to July 16, 1997. If a Region believes that seeking penalties for violations occurring prior to July 16, 1997 is warranted, the Region should submit a justification to the Director of the Federal Facilities Enforcement Office. Regions should consider the size of violator when determining the appropriate penalty against a Federal agency. In many instances, Federal agencies would be considered large violators; in these cases, the Regions should apply the 50% formula, under which the size of the violator component, if very large, may be reduced to 50% of the total penalty at the discretion of the Agency.

In determining an appropriate penalty, EPA will apply its penalty policies, the October 25, 1991, CAA Stationary Source Civil Penalty Policy, and amendments thereto, and the Mobile Source Penalty Policies[11], including capturing economic benefit for avoidance of costs, against a Federal agency for violations of the CAA in the same manner and to the same extent as against any private party. The May 1, 1998, "Supplemental Environmental Projects Policy" and any

[10] This policy does not intend to require any conduct contrary to the Anti-Deficiency Act.

[11]Interim Tampering Enforcement Policy, 6/25/74, Civil Penalty Policy for Incorrect Aftermarket Catalytic Converter Applications, 4/18/88, Sale and Use of Aftermarket Catalytic Converters, contained in 51 Fed. Reg. 28133 (8/5/86), Enforcement Policy for Aftermarket Catalytic Converter Violations, 12/22/88, Volatility Civil Penalty Policy, 12/01/89, Aftermarket Converter Enforcement and Penalty Issues, 8/10/90, Proposed Policy for Enforcing the New Defeat Device Authority with regard to Catalyst Replacement Pipe Manufacturers and Sellers, 1/02/91, Civil Penalty Policy for Administrative Hearings, 1/14/93, Manufacturers Programs Branch Interim Penalty Policy, Appendix I: Manufacturers Programs Branch MFB Imports Program Penalty Policy, 3/31/93, Interim Diesel Civil Penalty Policy, 2/08/94, Tampering and Defeat Device Civil Penalty Policy for Notices of Violation, 2/28/94.

APPENDIX B: GUIDANCE ON IMPLEMENTATION OF EPA'S PENALTY/COMPLIANCE ORDER AUTHORITY AGAINST FEDERAL AGENCIES UNDER THE CLEAN AIR ACT (CAA) (continued)

subsequent updates also apply in this context. Moreover, for settled compliance cases that require work, stipulated penalties should be included in the Compliance Agreement.

VII. PRESS RELEASE FOR CAA ENFORCEMENT ACTIONS

EPA uses the publicity of enforcement activities as a key element of the Agency's program to promote compliance and to deter noncompliance with environmental laws and regulations. Publicizing EPA enforcement actions against private parties and Federal agencies informs both the public and the regulated community of EPA's efforts to ensure compliance and take enforcement actions. EPA's decision to issue a press release and the contents of press releases are not negotiable with Federal agencies or other regulated entities. Upon the issuance of an order or the filing of a complaint, FFEO strongly encourages Regions to issue a press release.

VIII. CONCLUSION

FFEO is issuing this guidance to clarify enforcement procedures for Federal facility enforcement under the CAA. This guidance supersedes earlier guidance regarding CAA enforcement at Federal facilities such as that found in the 1988 Federal Facilities Compliance Strategy. Should you have any concerns or questions, please have your staff call Mary Kay Lynch at (202)564-2574 or Sally Dalzell at (202) 564-2583.

IX. NOTICE

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. Such guidance and procedures do not constitute rule making by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance and its internal implementing procedures.

Attachment

cc: Air Enforcement Branch Chiefs
Federal Facility Coordinators, Regions I-X

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APPENDIX C: KEY EXECUTIVE ORDERS

EXECUTIVE ORDER 12088: FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, as amended by Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2928, provided: By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1-1. Applicability of Pollution Control Standards

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following: (a) Toxic Substances Control Act (15 U.S.C. 2601 et seq.). (b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). (c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f et seq.). (d) Clean Air Act, as amended (42 U.S.C. 7401 et seq.). (e) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.). (f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.). (g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978). (h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434) (16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.). (I) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

1-103. ''Applicable pollution control standards'' means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. Agency Coordination

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12088: FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS (continued)

1-3. Technical Advice and Oversight

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. Pollution Control Plan

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

1-5. Funding

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. Compliance with Pollution Controls

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12088: FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS (continued)

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statues and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. Limitation on Exemptions

1-701**.** Exemptions from applicable pollution control standards may only be granted under statues cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. General Provisions

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Nothing in this Order shall create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

1-803. Executive Order No. 11752 of December 17, 1973, is revoked.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580: SUPERFUND IMPLEMENTATION

HISTORY: Signed Jan. 23, 1987; 52 FR 2923, Jan. 29, 1987, 3 CFR, 1987 Comp., p. 193;
Amended by Executive Order 12777 , Oct. 18, 1991; 56 FR 54757, Oct. 22, 1991

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 et seq.) ("the Act"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. National Contingency Plan.

(a) (1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies' representative shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian Tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

(b) (1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act, by Section 311(d)(1) of the Federal Water Pollution Control Act, and by Section 4201(c) of the Oil Pollution Act of 1990 is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L.99-499) ("SARA") is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act, Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5), and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990, the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense;
(2) Secretary of the Interior;
(3) Secretary of Agriculture;
(4) Secretary of Commerce;
(5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director or the Office of Management and Budget ("OMB"). [Section 1 revised by E.O. 12777 , Oct. 18, 1991]

Sec. 2. Response and Related Authorities.

(a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act relating to illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7) , and 121(f)(1) of the Act, relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c) (1) The functions vested in the President by Sections 104(a) and the second sentence of 126(b) of the Act, to the extent they require permanent relocation of residents, business, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a)and (c), and 119 of the Act, to the extend such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c) , 119, and 121 of the Act are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act.

(e) (1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4) , and 121 of the Act are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term "emergency", solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119 of the Act are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k) , 117(a) and (c), 119, and 121 of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA.

(h) The functions vested in the President by Section 104(c)(3) of the Act are delegated to the Administrator, with respect to providing assurances for Indian Tribes, to be exercised in consultation with the Secretary of the Interior.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j) (1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Sections 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of the Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

Sec. 3. Cleanup Schedules.

(a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

Sec. 4. Enforcement.

(a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act, relating to the development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b) (1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122(except subsection (b)(1)) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c) (1) Subject to subsection (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(2) Subject to subsection (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Sections 103(a) and (b), and 122 of the Act, are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(d) (1) Subject to subsections (a), (b)(1), and (c)(1) of this Section, the functions vested in the President by Sections 106 and 122 of the Act are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Sections 103 and 122 of the Act, are delegated to the Administrator.

(e) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a) of the Act to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

Sec. 5. Liability.

(a) The function vested in the President by Section 107(c)(1)(C) of the Act is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107(c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107 (f)(2)(B) of the Act, to receive notification of the State natural resource trustee designations, are delegated to the Administrator.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

Sec. 6. Litigation.

(a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act, to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections 310(d) and (e) of the Act, relating to promulgation of regulations, are delegated to the Administrator.

Sec. 7. Financial Responsibility.

(a) The functions vested in the President by section 107(k)(4)(B) of the Act are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b) (1) The functions vested in the President by Section 108(a)(1) of the Act are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c) (1) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

(d) (1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108(a)(4)and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(4) and (b) of the Act, are delegated to the Administrator.

Sec. 8. Employee Protection and Notice to Injured.

(a) The functions vested in the President by Section 110(e) of the Act are delegated to the Administrator.

(b) The functions vested in the President by Section 111(g) of the Act are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111(g) of the Act are delegated to the Administrator.

Sec. 9. Management of the Hazardous Substance Superfund and Claims.

(a) The functions vested in the President by Section 111(a) of the Act are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry ("ATSDR"), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB. The Administrator shall prescribe forms to agency task force members for reporting the expenditure of funds on a site specific basis.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by section 112 of the Act are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

Sec. 10. Federal Facilities.

(a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act, Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1-6 of Executive Order No. 12088 of October 13, 1978, or any other mutually acceptable process. Notwithstanding subsection 1-602 of Executive Order No. 12088 , the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) [Omitted]

[Editor's Note: Paragraph (b) of this section amended Executive Order 12088 . That change has been incorporated on page 81:0301.]

Sec. 11. General Provisions.

(a) The function vested in the President by Section 101(37) of the Act is delegated to the Administrator.

(b) (1) The function vested in the President by Section 105(f) of the Act, relating to reporting on minority participation in contracts, is delegated to the Administrator.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12580:
SUPERFUND IMPLEMENTATION (continued)

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5(b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13016
AMENDMENT TO EXECUTIVE ORDER 12580

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.) (the "Act"), and section 301 of title 3, United States Code, I hereby order that Executive Order No. 12580 of January 23, 1987, be amended by addition to section 4 the following new subsections:

Section 1. A new subsection (c)(3) is added to read as follows:

"(3) Subject to sections (a) and (b)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Energy, to be exercised only with the concurrence of the Coast Guard, with respect to any release or threatened release in the coastal zone, Great Lakes waters, ports, and harbors, affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel or facility at which the Coast Guard is the lead Federal agency for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness."

Sec. 2. A new subsection (d)(3) is added to section 4 to read as follows:

"(3) Subject to subsections (a), (b)(1), and (c)(1) of this section, the functions vested in the President by sections 106(a) and 122 (except subsection (b)(1) of the Act are delegated to the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, and the Department of Energy, to be exercised only with the concurrence of the Administrator, with respect to any release or threatened release affecting (1) natural resources under their trusteeship, or (2) a vessel or facility subject to their custody, jurisdiction, or control. Such authority shall not be exercised at any vessel of facility at which the Administrator is the lead Federal official for the conduct or oversight of a response action. Such authority shall not be construed to authorize or permit use of the Hazardous Substance Superfund to implement section 106 or to fund performance of any response action in lieu of the payment by a person who receives but does not comply with an order pursuant to section 106(a), where such order has been issued by the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Defense, or the Secretary of Energy. This subsection shall not be construed to limit any authority delegated by any other section of this order. Authority granted under this subsection shall be exercised in a manner to ensure interagency coordination that enhances efficiency and effectiveness."

/s/William J. Clinton

THE WHITE HOUSE, August 28, 1996.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12856[1]: FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS

WHEREAS, the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001-11050) (EPCRA) established programs to provide the public with important information on the hazardous and toxic chemicals in their communities, and established emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances;

WHEREAS, the Federal government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals;

WHEREAS, the Pollution Prevention Act of 1990 (42 U.S.C. 13101- 13109) (PPA) established that it is the national policy of the United States that, whenever feasible, pollution should be prevented or reduced at the source; that pollution that cannot be prevented should be recycled in an environmentally safe manner; that pollution that cannot be prevented or recycled should be treated in an environmentally safe manner; and that disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner;

WHEREAS, the PPA required the Administrator of the Environmental Protection Agency (EPA) to promote source reduction practices in other agencies;

WHEREAS, the Federal government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies;

WHEREAS, the environmental, energy, and economic benefits of energy and water use reductions are very significant; the scope of innovative pollution prevention programs must be broad to adequately address the highest-risk environmental problems and to take full advantage of technological opportunities in sectors other than industrial manufacturing; the Energy Policy Act of 1992 (Public Law 102-486 of October 24, 1992) requires the Secretary of Energy to work with other Federal agencies to significantly reduce the use of energy and reduce the related environmental impacts by promoting use of energy efficiency and renewable energy technologies; and

WHEREAS, as the largest single consumer in the Nation, the Federal government has the opportunity to realize significant economic as well as environmental benefits of pollution prevention;

AND IN ORDER TO:

Ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment;

[1]A new executive order pertaining to leadership in environment management will establish new requirements for Federal agencies and combine the requirements of E.O. 12856, *Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements;* E.O. 12845, *Requiring Agencies to Purchase Energy Efficient Computer Equipment*; E.O. 12969, *Federal Acquisition; Community Right-to-Know; Toxic Chemical Release Reporting*; and the *Environmentally and Economically Beneficial Practices on Federal Landscaped Grounds* memorandum. The new executive order is currently being reviewed at the Office of Management and Budget.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12856: FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS

Require Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification; and

Help encourage markets for clean technologies and safe alternatives to extremely hazardous substances or toxic chemicals through revisions to specifications and standards, the acquisition and procurement process, and the testing of innovative pollution prevention technologies at Federal facilities or in acquisitions;

NOW THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the EPCRA, the PPA, and section 301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Applicability.

1-101. As delineated below, the head of each Federal agency is responsible for ensuring that all necessary actions are taken for the prevention of pollution with respect to that agency's activities and facilities, and for ensuring that agency's compliance with pollution prevention and emergency planning and community right-to-know provisions established pursuant to all implementing regulations issued pursuant to EPCRA and PPA.

1-102. Except as otherwise noted, this order is applicable to all Federal agencies that either own or operate a "facility" as that term is defined in section 329(4) of EPCRA, if such facility meets the threshold requirements set forth in EPCRA for compliance as modified by section 3-304(b) of this order ("covered facilities"). Except as provided in section 1-103 and section 1-104 below, each Federal agency must apply all of the provisions of this order to each of its covered facilities, including those facilities which are subject, independent of this order, to the provisions of EPCRA and PPA (e.g., certain Government-owned/contractor-operator facilities (GOCO's), for chemicals meeting EPCRA thresholds). This order does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad.

1-103. Nothing in this order alters the obligations which GOCO's and Government corporation facilities have under EPCRA and PPA independent of this order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, consistent with section 1-104 below, each Federal agency shall include the releases and transfers from all such facilities when meeting all of the Federal agency's responsibilities under this order.

1-104. To facilitate compliance with this order, each Federal agency shall provide in all future contracts between the agency and its relevant contractors, for the contractor to supply to the Federal agency all information the Federal agency deems necessary for it to comply with this order. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, Federal agencies shall take practical steps to obtain the information needed to comply with this order from such contractors.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12856:
FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS (continued)

Sec. 2-2. Definitions.

2-201. All definitions found in EPCRA and PPA and implementing regulations are incorporated in this order by reference, with the following exception: for the purposes of this order, the term "person", as defined in section 329(7) of EPCRA, also includes Federal agencies.

2-202. Federal agency means an Executive agency, as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2-203. Pollution Prevention means "source reduction," as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

2-204. GOCO means a government-owned/contractor-operated facility which is owned by the Federal government but all or portions of which are operated by private contractors.

2-205. Administrator means the Administrator of the EPA.

2-206. Toxic Chemical means a substance on the list described in section 313(c) of EPCRA.

2-207. Toxic Pollutants. For the purposes of section 3-302(a) of this order, the term "toxic pollutants" shall include, but is not necessarily limited to, those chemicals at a Federal facility subject to the provisions of section 313 of EPCRA as of December 1, 1993. Federal agencies also may choose to include releases and transfers of other chemicals, such as "extremely hazardous chemicals" as defined in section 329(3) of EPCRA, hazardous wastes as defined under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6986) (RCRA), or hazardous air pollutants under the Clean Air Act Amendments (42 U.S.C. 7403-7626); however, for the purposes of establishing the agency's baseline under 3-302(c), such "other chemicals" are in addition to (not instead of) the section 313 chemicals. The term "toxic pollutants" does not include hazardous waste subject to remedial action generated prior to the date of this order.

Sec. 3-3. Implementation.

3-301. Federal Agency Strategy. Within 12 months of the date of this order, the head of each Federal agency must develop a written pollution prevention strategy to achieve the requirements specified in sections 3-302 through 3-305 of this order for that agency. A copy thereof shall be provided to the Administrator. Federal agencies are encouraged to involve the public in developing the required strategies under this order and in monitoring their subsequent progress in meeting the requirements of this order.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12856:
FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS (continued)

The strategy shall include, but shall not be limited to, the following elements: (a) A pollution prevention policy statement, developed by each Federal agency, designating principal responsibilities for development, implementation, and evaluation of the strategy. The statement shall reflect the Federal agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition, and it shall identify an individual responsible for coordinating the Federal agency's efforts in this area. (b) A commitment to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable Federal, State, and local environmental requirements.

3-302. Toxic Chemical Reduction Goals. (a) The head of each Federal agency subject to this order shall ensure that the agency develops voluntary goals to reduce the agency's total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by this order by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices. (b) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal for each Federal agency shall be the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic chemicals reported in the baseline year for all of that Federal agency's facilities meeting the threshold applicability requirements set forth in section 1- 102 of this order. In no event shall the baseline be later than the 1994 reporting year. (c) Alternatively, a Federal agency may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the Federal agency shall delineate the scope of its reduction program in the written pollution prevention strategy that is required by section 3-301 of this order. The baseline for measuring reductions for purposes of achieving the 50 percent reduction requirement for each Federal agency shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that Federal agency's facilities encompassed by section 3-301. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the agency in the baseline year. For any toxic pollutants included by the agency in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the agency shall report on such toxic pollutants annually under the provisions of section 3- 304 of this order, if practicable, or through an agency report that is made available to the public. (d) The head of each Federal agency shall ensure that each of its covered facilities develops a written pollution prevention plan no later than the end of 1995, which sets forth the facility's contribution to the goal established in section 3-302(a) of this order. Federal agencies shall conduct assessments of their facilities as necessary to ensure development of such plans and of the facilities' pollution prevention programs.

3-303. Acquisition and Procurement Goals. (a) Each Federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12856:
FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS (continued)

hazardous substances or toxic chemicals. Similarly, each Federal agency shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section. (b) Within 24 months of the date of this order, the Department of Defense (DoD) and the General Services Administration (GSA), and other agencies, as appropriate, shall review their agency's standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use by their agency of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their agency mission. The EPA shall assist agencies in meeting the requirements of this section, including identifying substitutes and setting priorities for these reviews. By 1999, DoD, GSA and other affected agencies shall make all appropriate revisions to these specifications and standards. (c) Any revisions to the Federal Acquisition Regulation (FAR) necessary to implement this order shall be made within 24 months of the date of this order. (d) Federal agencies are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, government laboratories, academia, and others to assess and deploy innovative environmental technologies for domestic use and for markets abroad.

3-304. Toxics Release Inventory/Pollution Prevention Act Reporting. (a) The head of each Federal agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA. (b) The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3-304(a) of this order. (c) The first year of compliance shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

3-305. Emergency Planning and Community Right-to-Know Reporting Responsibilities. The head of each Federal agency shall comply with the provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of any applicable guidance as provided by EPA. Effective dates for compliance shall be: (a) With respect to the provisions of section 302 of EPCRA, emergency planning notification shall be made no later than 7 months after the date of this order. (b) With respect to the provisions of section 303 of EPCRA, all information necessary for the applicable Local Emergency Planning Committee (LEPC's) to prepare or revise local Emergency Response Plans shall be provided no later than 1 year after the date of this order. (c) To the extent that a facility is required to maintain Material Safety Data Sheets under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than 1 year after the date of this order, and the first year of compliance with section 312 shall be no later than the 1994

EXECUTIVE ORDER 12856:
FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS (continued)

calendar year, with reports due on or before March 1, 1995. (d) The provisions of section 304 of EPCRA shall be effective beginning January 1, 1994. (e) These compliance dates are not intended to delay implementation of earlier timetables already agreed to by Federal agencies and are inapplicable to the extent they interfere with those timetables.

Sec. 4-4. Agency Coordination.

4-401. By February 1, 1994, the Administrator shall convene an Interagency Task Force composed of the Administrator, the Secretaries of Commerce, Defense, and Energy, the Administrator of General Services, the Administrator of the Office of Procurement Policy in the Office of Management and Budget, and such other agency officials as deemed appropriate based upon lists of potential participants submitted to the Administrator pursuant to this section by the agency head. Each agency head may designate other senior agency officials to act in his/her stead, where appropriate. The Task Force will assist the agency heads in the implementation of the activities required under this order.

4-402. Federal agencies subject to the requirements of this order shall submit annual progress reports to the Administrator beginning on October 1, 1995. These reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including the pollution reductions requirements. This reporting requirement shall expire after the report due on October 1, 2001.

4-403. Technical Advice. Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to foster full compliance with this order. In addition, to the extent practicable, all Federal agencies subject to this order shall provide technical assistance, if requested, to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities.

4-404. Federal agencies shall place high priority on obtaining funding and resources needed for implementing all aspects of this order, including the pollution prevention strategies, plans, and assessments required by this order, by identifying, requesting, and allocating funds through line-item or direct funding requests. Federal agencies shall make such requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through agency budget requests as outlined in Office of Management and Budget (OMB) Circulars A-106 and A-11, respectively. Federal agencies should apply, to the maximum extent practicable, a life cycle analysis and total cost accounting principles to all projects needed to meet the requirements of this order.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12856: FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS (continued)

4-405. Federal Government Environmental Challenge Program. The Administrator shall establish a "Federal Government Environmental Challenge Program" to recognize outstanding environmental management performance in Federal agencies and facilities. The program shall consist of two components that challenge Federal agencies; (a) to agree to a code of environmental principles to be developed by EPA, in cooperation with other agencies, that emphasizes pollution prevention, sustainable development and state-of-the- art environmental management programs, and (b) to submit applications to EPA for individual Federal agency facilities for recognition as "Model Installations." The program shall also include a means for recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention.

Sec. 5-5. Compliance.

5-501. By December 31, 1993, the head of each Federal agency shall provide the Administrator with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and this order.

5-502. The head of each Federal agency is responsible for ensuring that such agency take all necessary actions to prevent pollution in accordance with this order, and for that agency's compliance with the provisions of EPCRA and PPA. Compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person. Nothing in this order shall be construed as making the provisions of sections 325 and 326 of EPCRA applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions. EPA shall consult with Federal agencies, if requested, to determine the applicability of this order to particular agency facilities.

5-503. Each Federal agency subject to this order shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with sections 3-304 and 3- 305 of this order.

5-504. The Administrator, in consultation with the heads of Federal agencies, may conduct such reviews and inspections as may be necessary to monitor compliance with sections 3-304 and 3-305 of this order. Except as excluded under section 6-601 of this order, all Federal agencies are encouraged to cooperate fully with the efforts of the Administrator to ensure compliance with sections 3-304 and 3-305 of this order.

5-505. Federal agencies are further encouraged to comply with all State and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12856:
FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW LAWS AND POLLUTION PREVENTION REQUIREMENTS (continued)

5-506. Whenever the Administrator notifies a Federal agency that it is not in compliance with an applicable provision of this order, the Federal agency shall achieve compliance as promptly as is practicable.

5-507. The EPA shall report annually to the President on Federal agency compliance with the provisions of section 3-304 of this order. 5-508. To the extent permitted by law and unless such documentation is withheld pursuant to section 6-601 of this order, the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under this order by the agency preparing the strategy, plan, or report. When the reports are submitted to EPA, EPA shall compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public.

Sec. 6-6. Exemption.

6-601. In the interest of national security, the head of a Federal agency may request from the President an exemption from complying with the provisions of any or all aspects of this order for particular Federal agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed. To the maximum extent practicable, and without compromising national security, all Federal agencies shall strive to comply with the purposes, goals, and implementation steps set forth in this order.

Sec. 7-7. General Provisions.

7-701. Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

<signature of President>

THE WHITE HOUSE,
August 3, 1993.

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APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12898: FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

Ex. Ord. No. 12898, Feb. 11, 1994, 59 F.R. 7629, as amended by Ex. Ord. No. 12948, Jan. 30, 1995, 60 F.R. 6381, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. Implementation

1-101. Agency Responsibilities.

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice.

(a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees:

(a) Department of Defense;
(b) Department of Health and Human Services;
(c) Department of Housing and Urban Development;
(d) Department of Labor;
(e) Department of Agriculture;
(f) Department of Transportation;
(g) Department of Justice;
(h) Department of the Interior;
(i) Department of Commerce;
(j) Department of Energy;
(k) Environmental Protection Agency;
(l) Office of Management and Budget;
(m) Office of Science and Technology Policy;
(n) Office of the Deputy Assistant to the President for Environmental Policy;
(o) Office of the Assistant to the President for Domestic Policy;
(p) National Economic Council;
(q) Council of Economic Advisers; and
(r) such other government officials as the President may designate.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12898:
FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS (continued)

The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall:

(1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies.

(a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum:

(1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations;

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12898:
FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS (continued)

(2) ensure greater public participation;

(3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and

(4) identify differential patterns of consumption of natural resources among minority populations and low-income populations.

In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) By March 24, 1995, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. From the date of this order through March 24, 1995, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. Reports to the President. Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12898:
FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS (continued)

Sec. 2-2. Federal Agency Responsibilities for Federal Programs.

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3-3. Research, Data Collection, and Analysis.

3-301. Human Health and Environmental Research and Analysis.

(a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. Human Health and Environmental Data Collection and Analysis.

To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a):

(a) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a

EXECUTIVE ORDER 12898:
FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS (continued)

substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are:

(1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856 (42 U.S.C. 11001 note); and

(2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and Tribal governments.

Sec. 4-4. Subsistence Consumption of Fish and Wildlife.

4-401. Consumption Patterns.

In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4-402. Guidance.

Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5-5. Public Participation and Access to Information.

(a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12898:
FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS (continued)

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6-6. General Provisions.

6-601. Responsibility for Agency Implementation. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250. This Executive order is intended to supplement but not supersede Executive Order No. 12250 (42 U.S.C. 2000d-1 note), which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. Executive Order No. 12875. This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875 (5 U.S.C. 601 note).

6-604. Scope. For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. Petitions for Exemptions. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with Tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 12898:
FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS (continued)

6-607. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

William J. Clinton.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101: GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act (RCRA), Public Law 94-580, 90 Stat. 2795, as amended (42 U.S.C. 6901-6907), section 301 of title 3, United States Code, and in order to improve the Federal Government's use of recycled products and environmentally preferable products and services, it is hereby ordered as follows:

Part 1 - Preamble

Section 101. Consistent with the demands of efficiency and cost effectiveness, the head of each executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products. It is the national policy to prefer pollution prevention, whenever feasible. Pollution that cannot be prevented should be recycled; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner. Disposal should be employed only as a last resort.

Sec. 102. Consistent with policies established by the Office of Federal Procurement Policy (OFPP) Policy Letter 92-4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

Sec. 103. This order creates a Steering Committee, a Federal Environmental Executive (FEE), and a Task Force, and establishes Agency Environmental Executive (AEE) positions within each agency, to be responsible for ensuring the implementation of this order. The FEE, AEEs, and members of the Steering Committee and Task Force shall be full-time Federal Government employees.

Part 2 - Definitions

For purposes of this order:

Sec. 201. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Sec. 202. "Executive agency" or "agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

Sec. 203. "Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material."

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

Sec. 204. "Acquisition" means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 205. "Recovered materials" means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Sec. 206. "Recyclability" means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

Sec. 207. "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

Sec. 208. "Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

Sec. 209. "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Sec. 210. "Life cycle cost" means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

Sec. 211. "Life cycle assessment" means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

Sec. 212. "Pollution prevention" means "source reduction" as defined in the Pollution Prevention Act of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

Sec. 213. "Biobased product" means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

Sec. 214. "Major procuring agencies" shall include any executive agency that procures over $50 million per year of goods and services.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continue)

Part 3 - The Roles and Duties of the Steering Committee, Federal Environmental Executive, Task Force, and Agency Environmental Executives

Sec. 301. Committees, Executives, and Task Force.

(a) Steering Committee. There is hereby established a Steering Committee on Greening the Government through Waste Prevention and Recycling ("Steering Committee"). The Steering Committee shall be composed of the Chair of the Council on Environmental Quality (CEQ), the Federal Environmental Executive (FEE), and the Administrator for Federal Procurement Policy (OFPP). The Steering Committee, which shall be chaired by the Chair of the CEQ, is directed to charter a Task Force to facilitate implementation of this order, and shall provide the Task Force with policy direction in such implementation.

(b) Federal Environmental Executive. A Federal Environmental Executive, Environmental Protection Agency, shall be designated by the President. The FEE shall chair the Task Force described in subsection (c), take all actions necessary to ensure that the agencies comply with the requirements of this order, and generate a biennial report to the President.

(c) Task Force. The Steering Committee shall charter a Task Force on Greening the Government through Waste Prevention and Recycling ("Task Force"), which shall be chaired by the FEE and composed of staff from the major procuring agencies. The Steering Committee, in consultation with the agencies, shall determine the necessary staffing and resources for the Task Force. The major procuring agencies shall provide, to the extent practicable and permitted by law, resources and support to the Task Force and the FEE, upon request from the Steering Committee. The Task Force shall have the duty of assisting the FEE and the agencies in implementing this order, subject to policy direction provided by the Steering Committee. The Task Force shall report through the FEE to the Chair of the Steering Committee.

(d) Agency Environmental Executives (AEEs). Within 90 days after the date of this order, the head of each major procuring agency shall designate an AEE from among his or her staff, who serves at a level no lower than the Assistant Secretary level or equivalent, and shall notify the Chair of CEQ and the FEE of such designation.

Sec. 302. Duties.

(a) The Federal Environmental Executive. The FEE, working through the Task Force, and in consultation with the AEEs, shall:

(1) Develop a Government-wide Waste Prevention and Recycling Strategic Plan ("Strategic Plan") to further implement this order. The Strategic Plan should be initially developed within 180 days of the date of this order and revised as necessary thereafter. The Strategic Plan should include, but is not limited to, the following elements:

(a) direction and initiatives for acquisition of recycled and recyclable products and environmentally preferable products and services;

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

(b) development of affirmative procurement programs;

(c) review and revision of standards and product specifications;

(d) assessment and evaluation of compliance;

(e) reporting requirements;

(f) outreach programs to promote adoption of practices endorsed in this order; and

(g) development and implementation of new technologies that are of environmental significance.

(2) Prepare a biennial report to the President on the actions taken by the agencies to comply with this order. The report also may incorporate information from existing agency reports regarding Government-wide progress in implementing the following Executive Orders: 12843, Procurement Requirements and Policies for Federal Agencies for Ozone Depleting Substances; 13031, Federal Alternative Fueled Vehicle Leadership; 12845, Requiring Agencies to Purchase Energy Efficient Computer Equipment; 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements; 12902, Energy Efficiency and Water Conservation at Federal Facilities; and 12969, Federal Acquisition and Community Right-to-Know.

(3) In coordination with the Office of Federal Procurement Policy, the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Agriculture (USDA), convene a group of acquisition/procurement managers and environmental State, and local government managers to work with State and local governments to improve the Federal, State, and local governments' use of recycled products and environmentally preferable products and services.

(4) Coordinate appropriate Government-wide education and training programs for agencies.

(5) Establish committees and work groups, as needed, to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the FEE. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, pollution prevention, waste prevention, recycling, and others as needed to staff and work on these initiatives. An initial group shall be established to develop recommendations for tracking and reporting requirements, taking into account the costs and benefits of such tracking and reporting. The Steering Committee shall consult with the AEEs before approving these recommendations.

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

(b) Agency Environmental Executives. The AEEs shall:

(1) translate the Government-wide Strategic Plan into specific agency and service plans;

(2) implement the specific agency and service plans;

(3) report to the FEE on the progress of plan implementation;

(4) work with the FEE and the Task Force in furthering implementation of this order; and

(5) track agencies' purchases of EPA-designated guideline items and report agencies' purchases of such guideline items to the FEE per the recommendations developed in subsection 302(a)(5) of this order. Agency acquisition and procurement personnel shall justify in writing to the file and to the AEE the rationale for not purchasing such items, above the micropurchase threshold (as set out in the Office of Federal Procurement Policy Act at 41 U.S.C. 428), and submit a plan and timetable for increasing agency purchases of the designated item(s).

(6) one year after a product is placed on the USDA Biobased Products List, estimate agencies' purchases of products on the list and report agencies' estimated purchases of such products to the Secretary of Agriculture.

Part 4 - Acquisition Planning, Affirmative Procurement Programs, and Federal Facility Compliance

Sec. 401. Acquisition Planning. In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider, as appropriate, a broad range of factors including: elimination of virgin material requirements; use of biobased products; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal. These factors should be considered in acquisition planning for all procurement and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

Sec. 402. Affirmative Procurement Programs.

(a) The head of each executive agency shall develop and implement affirmative procurement programs in accordance with section 6002 of RCRA (42 U.S.C. 6962) and this order and consider use of the procurement tools and methods described in 7 U.S.C. 5909. Agencies shall ensure that responsibilities for preparation, implementation, and monitoring of affirmative procurement programs are shared between the program personnel and acquisition and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other executive agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance, and availability considerations, and constraints imposed by law, and shall adjust solicitation guidelines as necessary in order to accomplish this goal.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

(b) Agencies shall establish affirmative procurement programs for all EPA-designated guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within 1 year from the date the EPA designated the new items.

(c) Exclusive of the biobased products described in section 504, for the EPA-designated guideline items, which are contained in 40 CFR part 247, and for all future designated guideline items, agencies shall ensure that their affirmative procurement programs require 100 percent of their purchases of products to meet or exceed the EPA guideline unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Written justification is not required for purchases below the micropurchase threshold. For micropurchases, agencies shall provide guidance regarding purchase of EPA-designated guideline items. This guidance should encourage consideration of aggregating purchases when this method would promote economy and efficiency.

(d) Within 90 days after the date of this order, the head of each executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

Sec. 403. Federal Facility Compliance.

(a) Within 6 months of the date of this order, the Administrator of the EPA shall, in consultation with the Federal Environmental Executive, prepare guidance for use in determining Federal facility compliance with section 6002 of RCRA and the related requirements of this order.

(b) EPA inspections of Federal facilities conducted pursuant to RCRA and the Federal Facility Compliance Act and EPA "multi-media" inspections carried out at Federal facilities will include, where appropriate, evaluation of facility compliance with section 6002 of RCRA and any implementing guidance.

(c) Where inspections of Federal facilities are carried out by authorized States pursuant to RCRA and the Federal Facility Compliance Act, the Administrator of the EPA will encourage those States to include evaluation of facility compliance with section 6002 of RCRA in light of EPA guidance prepared pursuant to subsection (a), where appropriate, similar to inspections performed by the EPA. The EPA may provide information and technical assistance to the States to enable them to include such considerations in their inspection.

(d) The EPA shall report annually to the Federal Environmental Executive on the results of inspections performed by the EPA to determine Federal facility compliance with section 6002 of RCRA not later than February 1st for those inspections conducted during the previous fiscal year.

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

Part 5 - Standards, Specifications, and Designation of Items

Sec. 501. Specifications, Product Descriptions, and Standards. When developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions), and standards, executive agencies shall consider recovered materials and any environmentally preferable purchasing criteria developed by the EPA, and ensure the criteria are complied with in developing or revising standards. Agencies shall report annually to the FEE on their compliance with this section for incorporation into the biennial report to the President referred to in section 302(a)(2) of this order.

(a) If an inconsistency with section 6002 of RCRA or this order is identified in a specification, standard, or product description, the FEE shall request that the Environmental Executive of the pertinent agency advise the FEE as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that AEE to monitor and implement the plan for revising it.

Sec. 502. Designation of Items that Contain Recovered Materials. In order to expedite the process of designating items that are or can be made with recovered materials, the EPA shall use the following process for designating these items in accordance with section 6002(e) of RCRA.

(a) The EPA shall designate items that are or can be made with recovered material, by promulgating amendments to the Comprehensive Procurement Guideline (CPG). The CPG shall be updated every 2 years or as appropriate after an opportunity for public comment.

(b) Concurrent with the issuance of the CPG, the EPA shall publish for comment in the Federal Register Recovered Materials Advisory Notices that present the range of recovered materials content levels within which the designated items are currently available. These levels shall be updated periodically, after opportunity for public comment, to reflect changes in market conditions.

(c) Once items containing recovered materials have been designated by the EPA in the CPG, agencies shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guidelines unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

Sec. 503. Guidance on Acquisition of Environmentally Preferable Products and Services.

(a) The EPA shall develop guidance within 90 days from the date of this order to address environmentally preferable purchasing. The guidance may be based on the EPA's September 1995 Proposed Guidance on the Acquisition of Environmentally Preferable Products and Services and comments received thereon. The guidance should be designed for Government-wide use and targeted towards products and services that have the most effect. The guidance may also address the issues of use of the technical expertise of non-governmental entities and tools such as life cycle assessment in decisions on environmentally preferable purchasing. The EPA shall update this guidance every 2 years, or as appropriate.

(b) Agencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance on the Acquisition of Environmentally Preferable Products and Services through pilot projects to provide practical information to the EPA for further updating of the guidance. Specifically:

(1) These pilot projects shall be focused around those product and service categories, including printing, that have wide use within the Federal Government. Priorities regarding which product and service categories to pilot shall be developed by the individual agencies and the EPA, in consultation with the OFPP, the FEE, and the appropriate agency procurement executives. Any policy disagreements shall be resolved by the Steering Committee.

(2) Agencies are encouraged to use all of the options available to them to determine the environmentally preferable attributes of products and services in their pilot and demonstration projects, including the use of technical expertise of nongovernmental entities such as labeling, certification, or standards-developing organizations, as well as using the expertise of the National Institute of Standards and Technology.

(3) Upon request and to the extent practicable, the EPA shall assist executive agencies in designing, implementing, and documenting the results of these pilot and demonstration projects.

(4) The EPA, in coordination with other executive agencies, shall develop a database of information about these projects, including, but not limited to, the number and status of pilot projects, examples of agencies' policy directives, revisions to specifications, solicitation procedures, and grant/contract policies that facilitate adoption of environmentally preferable purchasing practices, to be integrated on a commonly available electronic medium (e.g., Internet Web site). These data are to be reported to the FEE.

(c) Executive agencies shall use the principles and concepts in the EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to the lessons from the pilot and demonstration projects, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and services and shall modify their procurement programs as appropriate.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

Sec. 504. Designation of Biobased Items by the USDA. The USDA Biobased Products Coordination Council shall, in consultation with the FEE, issue a Biobased Products List.

(a) The Biobased Products List shall be published in the Federal Register by the USDA within 180 days after the date of this order and shall be updated biannually after publication to include additional items.

(b) Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

Sec. 505. Minimum Content Standard for Printing and Writing Paper. Executive agency heads shall ensure that their agencies meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper:

(a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall be no less than 30 percent postconsumer materials beginning December 31, 1998. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency shall purchase paper containing no less than 20 percent postconsumer material. The Steering Committee, in consultation with the AEEs, may revise these levels if necessary.

(b) As an alternative to meeting the standards in sections 505(a), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product that would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(c) Effective January 1, 1999, no executive branch agency shall purchase, sell, or arrange for the purchase of, printing and writing paper that fails to meet the minimum requirements of this section.

Sec. 506. Revision of Brightness Specifications and Standards. The GSA and other executive agencies are directed to identify, evaluate, and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete the review and revision of such specifications within 6 months after the date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

Sec. 507. Procurement of Re-refined Lubricating Oil and Retread Tires.

(a) Agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires. Fleet and commodity managers shall take immediate steps, as appropriate, to procure these items in accordance with section 6002 of RCRA. This provision does not preclude the acquisition of biobased (e.g., vegetable) oils.

(b) The FEE shall work to educate executive agencies about the new Department of Defense Cooperative Tire Qualification Program, including the Cooperative Approval Tire List and Cooperative Plant Qualification Program, as they apply to retread tires.

Part 6 - Agency Goals and Reporting Requirements

Sec. 601. Agency Goals.

(a) (1) Each agency shall establish either a goal for solid waste prevention and a goal for recycling or a goal for solid waste diversion to be achieved by January 1, 2000. Each agency shall further ensure that the established goals include long-range goals to be achieved by the years 2005 and 2010. These goals shall be submitted to the FEE within 180 days after the date of this order.

(2) In addition to white paper, mixed paper/cardboard, aluminum, plastic, and glass, agencies should incorporate into their recycling programs efforts to recycle, reuse, or refurbish pallets and collect toner cartridges for remanufacturing. Agencies should also include programs to reduce or recycle, as appropriate, batteries, scrap metal, and fluorescent lamps and ballasts.

(b) Agencies shall set goals to increase the procurement of products that are made with recovered materials, in order to maximize the number of recycled products purchased, relative to non-recycled alternatives.

(c) Each agency shall set a goal for increasing the use of environmentally preferable products and services for those products and services for which the agency has completed a pilot program.

(d) Agencies are encouraged to incorporate into their Government Performance Results Act annual performance plans the goals listed in subsections (a), (b), and (c) above, starting with the submittal to the Office of Management and Budget of the plan accompanying the FY 2001 budget.

(e) Progress on attaining these goals should be reported by the agencies to the FEE for the biennial report specified in section 302(a)(2) of this order.

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

Part 7 - Applicability and Other Requirements

Sec. 701. Contractor Applicability. Contracts that provide for contractor operation of a Government-owned or -leased facility and/or contracts that provide for contractor or other support services at Government-owned or -operated facilities awarded by executive agencies after the date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations.

Sec. 702. Real Property Acquisition and Management. Within 90 days after the date of this order, and to the extent permitted by law and where economically feasible, executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of Federally owned and leased space. The GSA and other executive agencies shall also include environmental and recycling provisions in the acquisition and management of all leased space and in the construction of new Federal buildings.

Sec. 703. Retention of Funds.

(a) The Administrator of General Services shall continue with the program that retains for the agencies the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

(b) Agencies in non-GSA managed facilities, to the extent permitted by law, should develop a plan to retain the proceeds from the sale of materials recovered through recycling or waste prevention programs.

Sec. 704. Model Facility Programs. Each executive agency shall establish a model demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; composting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

Sec. 705. Recycling Programs.

(a) (1) Each executive agency that has not already done so shall initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

(2) Agencies shall designate a recycling coordinator for each facility or installation. The recycling coordinator shall implement or maintain waste prevention and recycling programs in the agencies' action plans.

APPENDIX C: KEY EXECUTIVE ORDERS (continued)

EXECUTIVE ORDER 13101:
GREENING THE GOVERNMENT THROUGH WASTE PREVENTION, RECYCLING, AND FEDERAL ACQUISITION (continued)

(b) Executive agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

Sec. 706. Review of Implementation. The President's Council on Integrity and Efficiency shall request that the Inspectors General periodically review agencies' implementation of this order.

Part 8 - Awareness

Sec. 801. Training.

(a) Within 180 days of the date of this order, the FEE and OFPP should evaluate the training courses provided by the Federal Acquisition Institute and the Defense Acquisition University and recommend any appropriate curriculum changes to ensure that procurement officials are aware of the requirements of this order.

(b) Executive agencies shall provide training to program management and requesting activities as needed to ensure awareness of the requirements of this order.

Sec. 802. Internal Agency Awards Programs. Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Among others, winners of agency-wide awards will be eligible for the White House Awards Program.

Sec. 803. White House Awards Program. A Government-wide award will be presented annually by the White House to the best, most innovative programs implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated Government-wide. The White House Awards Program will be administered jointly by the FEE and the CEQ.

Part 9 - Revocation, Limitation, and Implementation

Sec. 901. Executive Order 12873 of October 20, 1993, is hereby revoked.

Sec. 902. This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

Sec. 903. The policies and direction expressed in the EPA guidance to be developed pursuant to section 503 of this order shall be implemented and incorporated in the Federal Acquisition Regulation within 180 days after issuance of the guidance.

WILLIAM J. CLINTON
THE WHITE HOUSE,
September 14, 1998.

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APPENDIX D: EPA/FFEO COMPLIANCE ASSISTANCE TOOLS FOR FEDERAL FACILITIES

Pollution Prevention

‘ ***Pollution Prevention in the Federal Government: Guide for Developing Pollution Prevention Strategies for Executive Order 12856 and Beyond.*** (EPA 300-B-94-007, April 1994, 44 pp. plus 7 appendices) Provides background on executive order requirements and EPA activities in pollution prevention, focusing on the government’s roles in setting policies and regulations, making acquisitions, controlling hazardous waste, managing facilities, and facilitating R&D and technological transfer.

‘ ***Guidance for Implementing Executive Order 12856: Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements - March 1995.*** (EPA 300-B-95-005, April 1995, 51 pp.) Provides section-by-section interpretive guidance on E.O. 12856, explains how Federal agencies should comply with EPCRA reporting requirements, and offers “leadership options” for Federal agencies in meeting the goals of the executive order.

‘ ***Federal Facility Pollution Prevention Planning Guide.*** (EPA 300-B-94-012, November 1994, 29 pp.) Designed to help Federal agencies prepare facility pollution prevention plans under E.O. 12856. Outlines steps to follow in developing plans and provides lists of contacts.

‘ ***Federal Facility Pollution Prevention Project Analysis: A Primer for Applying Life Cycle and Total Cost Assessment Concepts.*** (EPA 300-B-95-008, July 1995, 60 pp.) A manual to help decision-makers understand and implement life cycle assessment and total cost assessment in evaluating projects. Explains concepts and provides step-by-step worksheets for performing cost assessments and life cycle assessments.

‘ ***Executive Order 12856: Federal Facility Environmental Outreach Guide.*** (EPA 745-B-96-001, August 1996, 21 pp.) This document provides Federal facility environmental coordinators with practical information to help develop and implement effective environmental outreach programs suitable for the community, an agency’s Headquarters, and outside State or Federal agencies.

‘ ***Pollution Prevention and the Clean Air Act: Benefits and Opportunities for Federal Facilities, Volume I***. (EPA 300-B-96-009A, May 1996, 62 pp.) Volume I of this report is intended to provide Federal facility managers with an understanding of programs established under the Clean Air Act Amendments of 1990 and outlines opportunities for using pollution prevention to achieve compliance with key requirements.

‘ ***Pollution Prevention and the Clean Air Act: Benefits and Opportunities for Federal Facilities, Volume II, Parts I and II: Cleaning and Degreasing, Painting and Depainting.*** (EPA 300-B-96-009B, May 1996, 119 pp.) Volume II in this series provides information to environmental managers on how to utilize pollution prevention approaches to complying with CAA requirements for cleaning, degreasing, painting and depainting processes at Federal facilities.

APPENDIX D: EPA/FFEO COMPLIANCE ASSISTANCE TOOLS FOR FEDERAL FACILITIES (continued)

‘ ***Meeting the Challenge: A Summary of Federal Agency Pollution Prevention Strategies***. (EPA 300-R-95-014, September 1995, 162 pp.) This document highlights the Federal community’s early success in implementing Executive Order 12856 “Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements.” It includes the summaries and full text of Federal Agency Pollution Prevention Strategies prepared by sixteen agencies.

Compliance and Enforcement

‘ ***Federal Facilities Environmental Justice Enforcement Initiative (FFEJEI): An Analysis of Toxic Release Inventory (TRI) Reporters (June 1997),*** (EPA 315-R-97-001, 75 pp.) This report provides an overview of the initiative and identifies Federal facilities with environmental issues present that are potential environmental justice sites. The goal is to assist regions in identifying Federal facilities sites that may pose environmental justice concerns.

‘ ***Federal Facility Compliance Act Enforcement: Analysis of RCRA Administrative Orders Issued at Federal Facilities (October 1992-December 1995).*** (EPA 300-R-97-002, January 1997, 210pp.) This study presents the results of an analysis of Administrative Orders (AOs) issued at Federal facilities for violations of the Resource Conservation and Recovery Act (RCRA), as amended by the Federal Facility Compliance Act (FFCA) of 1992.

‘ ***Federal Facilities Multi-Media Enforcement/Compliance Initiative: Final National Report.*** (EPA 300-R-96-001, December 1995, 102 pp.) National highlights of the initiative in FY 1993-94, plus reports from each EPA region.

‘ ***Federal Facilities Compliance Act: Final National Comprehensive Groundwater Monitoring Evaluation Report.*** (EPA 300-R-96-005, March 1996, 75 pp.) Technical results of 22 RCRA Comprehensive Groundwater Monitoring (CME) inspections at Federal facilities performed in FY 93.

‘ ***The State of Federal Facilities: An Overview of Environmental Compliance at Federal Facilities, FY 1993-1994.*** (EPA 300 R-96-002, December 1995, 152 pp.) Includes charts and tables with statistics on Federal compliance with CERCLA, RCRA, CAA, NPDES, TSCA, SDWA, EPCRA, FIFRA, and the status of the base closure program.

‘ ***TRI Reporting at Government-Owned Contractor-Operated Federal Facilities (GOCO’s) 1990-1993.*** (EPA 300-R-95-014, February 1996, 23 pp.) Private industry has been required to report TRI data under Section 313 of EPCRA since 1986. As a result of Executive Order 12856, this information is now included in release data for Federal facilities. This document provides an analysis of the TRI release information for facilities that were/are government-owned contractor-operated from 1990 to 1993.

APPENDIX D: EPA/FFEO COMPLIANCE ASSISTANCE TOOLS FOR FEDERAL FACILITIES (continued)

‘ ***TRI Reporting by Federal Facilities.*** (30 pp.) *An excerpt from the 1994 Toxics Release Inventory Public Data Release* (EPA 745-R-96-002) This document is a copy of Chapter 5 of the TRI public data release for 1994, the first year all Federal facilities reported under Section 313 of EPCRA. It is available in disk format from the U.S. GPO at 202-512-1530. Hard copies of the entire release may be obtained from the EPCRA Hotline at 703-535-0202.

‘ ***The Yellow Book: Guide to Environmental Enforcement and Compliance at Federal Facilities.*** (EPA 315-B-98-011, February 1999, 360 pp.) This guidebook is designed to help Federal facilities comply with environmental requirements. The Yellow Book summarizes the requirements of environmental statutes and highlights the statutes’ application to Federal facilities; summarizes the requirements of executive orders affecting Federal facilities; explains how, and by whom, Federal facility activities are monitored and tracked; and explains the enforcement tools and processes used by EPA, States, American Indian Tribes, and citizens to ensure compliance. The Yellow Book is written to meet the needs of a diverse audience and is organized into a preface, seven chapters, and six appendices.

Environmental Management

‘ ***Catalogue of Federal Agency Environmental Compliance/Management Documents.*** (EPA 300-B-94-012, June 1994, 79 pp.) Annotated listing of more than 200 Federal agency environmental compliance and management documents published by EPA and other agencies on compliance with specific environmental laws, policies, and environmental management programs.

‘ ***Environmental Management System Benchmark Report: A Review of Federal Agencies and Selected Private Corporations.*** (EPA 300-R-94-009, December 1994, 121 pp.) A comparison of performance in six environmental management areas of civilian Federal agencies, the Department of Energy, the Army, Navy, and Air Force, and three private sector corporations.

‘ ***Executive Guide to Facility Environmental Management by the Civilian Federal Agency Task Force.*** (November 1995, 34 pp.) Introductory reference guide for environmental management programs for Agency Executives; identifies key environmental issues, responsibilities, and potential liabilities

‘ ***EPA Federal Facilities Enforcement Office.*** (EPA 300-K-96-001, revised Spring 1996, 9 pp.) Organizational structure of the Federal Facilities Enforcement Office (FFEO): Director, Associate Director, Senior Counsel; Planning, Prevention and Compliance Staff; Site Remediation and Enforcement Staff; Regional Federal Facilities Coordinators. Describes functions of staff office as part of EPA’s Office of Enforcement and Compliance Assurance (OECA).

‘ ***FEDPLAN: Federal Agency Environmental Management Program Planning Guidance.*** (Draft, June 1996, 152 pp.) New draft guidance to Federal managers on A-106 (now called FEDPLAN) plans which are required by Executive Order 12088. Includes overview of the FEDPLAN process, descriptions of each element, and an instruction kit for completing new program plans and updating existing plans.

APPENDIX D: EPA/FFEO COMPLIANCE ASSISTANCE TOOLS FOR FEDERAL FACILITIES (continued)

‘ ***Federal Facilities Sector Notebook: A Profile of Federal Facilities.*** (EPA 300-B-96-003, January 1996, 103 pp.) One of a series of sector notebooks published by EPA to provide a snapshot of environmental programs, challenges, and accomplishments of the Federal facilities sector. Includes an introduction to Federal facilities, compliance and enforcement information, a discussion of processes typically found at Federal facilities, and a discussion of pollution prevention opportunities at Federal facilities.

‘ ***Environmental Audit Program Design Guidelines for Federal Agencies.*** (EPA-300-B-96-011, Spring 1997) This guide highlights some unique issues and legal considerations related to conducting environmental audits at both domestic and overseas Federal facilities. The document contains a detailed discussion regarding the design and administration of effective environmental auditing programs. Part II addresses specific steps in conducting an environmental audit.

‘ ***Generic Protocol for Conducting Environmental Audits of Federal Facilities.*** (EPA-300-B-96-012 A&B, December 1996, 3rd Edition, 1600 pp.) Material is intended to assist in conducting environmental audits and environmental management assessments. Protocols can be customized to Agency requirements. Complete generic protocol available on-line through Enviroene, in a diskette from NTIS (No. PB95-505-376GEI), and in the future, hard copy from NTIS.

‘ ***Strategy for Improving Environmental Management Programs at Civilian Federal Agencies.*** (EPA 300-B-96-006, December 1995, 60 pp.) A product of the Civilian Federal Agency Task Force, this document addresses environmental needs and potential for improvement at Civilian Federal agencies (includes Federal departments and agencies other than the Department of Defense and the Department of Energy).

‘ ***Final Report of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC).*** (EPA 540-R-96-013, April 1996, 260 pp.) (NTIS No. PB96-963-221) This is a consensus document containing principles and recommendations for improving Federal facility cleanup. Members of the committee who contributed to this document include individuals from EPA, USDA, DOI, DOE, DoD, NOAA, ATSDR; State Tribal and local governments; and many other nationally, regionally and locally based environmental justice, Native American, and labor organizations.

‘ ***Resource Directory for Environmentally Preferable Landscaping for Federal Facility Managers.*** [EPA-300-B-96-014A (Regions 1, 2, & 3), B (Regions 4 & 6), C (Regions 5, 7, & 8) and D (Regions 9 & 10), December 1996] This document offers more than 1,200 contacts nationwide and will assist managers of Federal facilities in implementation of the Presidential Memorandum on Environmentally and Economically Beneficial Landscaping Practices on Federal Landscaped Grounds.

‘ ***The Regional Federal Facilities Coordinator.*** (September 1996) A brochure which outlines the role of EPA’s Regional Federal Facilities Coordinators (“FFCs”) and provides names and addressees of FFCs in each Regional office.

APPENDIX D: EPA/FFEO COMPLIANCE ASSISTANCE TOOLS FOR FEDERAL FACILITIES (continued)

‘ ***Environmental Management Reviews (EMRs) at Federal Facilities.*** (January 1997) A brochure explaining EMRs, how they compare with other on-site assessments, how facilities can benefit, their scope, who conducts EMRs, how the process works, how reports are used, and a listing of EPA Regional EMR contacts.

‘ ***Implementation Guide for the Code of Environmental Management Principles for Federal Agencies (CEMP).*** (EPA-315-B-97-001, March 1997, 120 pp.) A guide to assist Federal Facilities in implementing the CEMP at the installation level. This document describes each of the CEMP principles and performance objectives and how the CEMP relates to environmental management systems and ties into other EPA programs.

‘ ***FedFacs, An Environmental Bulletin for Federal Facilities***. (EPA, Spring 1997) Published semi-annually, FedFacs is a bulletin published by EPA’s Federal Facilities Enforcement Office (FFEO). It contains articles for, by, and about Federal facilities. Look for the “Directors Word” -- a column written by FFEO’s director; “Guest Spot,” which features executives of Federal facilities; “The Hammer,” news about enforcement updates; the most recent “Calendar of Events;” and other noteworthy and notable news items.

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APPENDIX E: HOTLINES

Air Risk Information Support Center Hotline	**919-541-0888**

The Air Risk Information Support Center Hotline assists State and local air pollution control agencies and EPA Regional offices with technical matters pertaining to health, exposure, and risk assessment of air pollutants.

Acid Rain Hotline	**202-564-9620**

The Acid Rain Hotline records questions and document requests covering all areas of the Acid Rain Program. The Hotline assists callers who have specific technical or policy questions by forwarding those inquiries to experienced EPA Acid Rain Division personnel, who review them and respond to the caller, typically within 24 hours.

Environmental Justice Hotline	**800-962-6215**

This Hotline provides information on the environmental impacts on people of color and low-income populations. The Office of Environmental Justice works with the other EPA offices to coordinate communication, outreach, education, and training of the public on equity issues. It provides technical and financial assistance for community/economic development activities to address environmental equity concerns and serves as a central repository of environmental equity information.

Federal Facility 3016 Inventory Hotline	**888-219-0522**

This Hotline is available to answer questions regarding RCRA §3016 reporting requirements.

National Lead Information Clearinghouse	**800-424-5323** **800-532-3394**

The Clearinghouse is designed to provide in-depth technical and non-technical information on lead-related issues. The Clearinghouse is targeted for use by health and abatement professionals, academics, public officials and others dealing with lead issues on a professional basis. To contact the Clearinghouse call 1-800-424-5323. To receive a basic information packet, fact sheet, and a list of State and local contacts, contact the Hotline at 1-800-532-3394.

National Radon Information Hotline	**800-SOS-RADON** **800-55-RADON**

Hotline callers receive a packet of information about radon and a coupon for a low-cost radon test kit. To contact the Hotline, call 1-800-SOS-RADON. For specific answers to technical questions, contact the Radon Helpline at 1-800-55-RADON.

APPENDIX E: HOTLINES (continued)

National Pesticide Telecommunications Network	**800-858-PEST** **800-858-7377**

The toll-free National Telecommunications Network provides toxicological profiles, referrals to EPA offices, and additional resources on pesticides. To contact the network, call 1-800-858-PEST (general public) or 1-800-858-7377 (medical and government personnel).

Pollution Prevention Information Clearinghouse (PPIC)	**202-260-1023**

PPIC is dedicated to reducing or eliminating industrial pollutants through technology transfer, education, and public awareness. It is a free, non-regulatory service. A reference and referral phone service is available to answer questions, take orders for documents distributed by PPIC, or refer callers to appropriate contacts. The Clearinghouse distributes selected EPA documents and fact sheets on pollution prevention free of charge.

Resource Conservation and Recovery Act, Superfund, and Emergency Planning and Community Right-to-Know Hotline	**800-424-9346** **703-412-9810**

This Hotline is a publicly accessible service that provides up-to-date information on several EPA programs and provides copies of regulations that have appeared in the *Federal Register*. The Hotline responds to factual questions on Federal EPA regulations developed under the Resource Conservation and Recovery Act, including the Underground Storage Tank program, Superfund, Emergency Planning and Community Right-to-Know Act, and the Oil Pollution Act. The Hotline also provides information on Section 112(r) of the Clean Air Act and on Spill Prevention, Control, and Countermeasures regulations.

Safe Drinking Water Hotline	**800-426-4791**

The Safe Drinking Water Hotline assists both the regulated community (public water systems) and the public in understanding the regulations and programs developed in response to the SDWA.

Stratospheric Ozone Information Hotline	**800-296-1996** **202-775-6677**

The Hotline provides general information on stratospheric ozone depletion and its protection, as well as consultation on ozone protection regulations and requirements under the 1990 CAA Amendments. Areas in which the Hotline provides support include: CFC production phase-out and controls; servicing of motor vehicle air conditioners; recycling and emissions reduction; technician and equipment certification; the banning of non-essential uses of ozone-depleting substances; and product labeling. The Hotline also provides a free publication called the *Plain English Guide to the Clean Air Act* that highlights the 1990 CAA Amendments.

APPENDIX E: HOTLINES (continued)

Toxic Release Inventory Support Hotline	**202-260-1531**

The Toxic Release Inventory Support (TRI-US) provides access and user support to EPA staff, other Federal agencies, industry, environmental and public interest groups, libraries, the international community, and citizens. TRI-US is available in a variety of formats: on-line, CD-ROM, microfiche, floppy diskettes, and hard copy. TRI-US provides help in choosing and accessing all formats with documentation and specialized search assistance. Customized on-line searches are performed on a limited basis for patrons of TRI-US. General questions about the Toxic Chemical Release Inventory are answered and referrals to EPA Regional or State TRI contacts are provided.

Toxic Substances Control Act (TSCA) Assistance Information Service	**202-260-1531**

The TSCA Hotline provides up-to-date technical assistance and information about programs implemented under TSCA, the Asbestos School Hazard Abatement Reauthorization Act, the Residential Lead-Based Paint Hazard Reduction Act, and the Pollution Prevention Act. In addition, the Hotline provides a variety of documents, including *Federal Register* notices, reports, information brochures, and booklets. The Hotline is a free service available to private citizens, State and local governments, Federal agencies, environmental and public interest groups, and Congressional members and staff.

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APPENDIX F: WEB PAGES

U.S. ENVIRONMENTAL PROTECTION AGENCY HOME PAGE:
http://www.epa.gov

EPA REGIONS

Region 1 Home Page: http://www.epa.gov/region01

Region 2 Home Page: http://www.epa.gov/Region2

Region 3 Home Page: http://www.epa.gov/region03

Region 4 Home Page: http://www.epa.gov/region4/reg4.html

Region 5 Home Page: http://www.epa.gov/Region5

Region 6 Home Page: http://www.epa.gov/earth1r6/index.htm

Region 7 Home Page: http://www.epa.gov/rgytgrnj

Region 8 Home Page: http://www.epa.gov/unix0008

Region 9 Home Page: http://www.epa.gov/region09

Region 10 Home Page: http://www.epa.gov/r10earth

RELEVANT EPA HEADQUARTER'S OFFICES

Federal Facilities Enforcement Office Home Page: http://es.epa.gov/oeca/fedfac/fflex.html

Office of Enforcement and Compliance Assurance Home Page: http://es.epa.gov/oeca/

Federal Facilities Restoration and Reuse Office Home Page: http://www.epa.gov/swerffrr/

Office of Site Remediation Enforcement Home Page: http://es.epa.gov/oeca/osre/

Office of Federal Activities Home Page: http://es.epa.gov/oeca/ofa/

APPENDIX F: WEB PAGES (continued)

HAZARDOUS SUBSTANCES/WASTE

Office of Solid Waste and Emergency Response Home Page:
http://www.epa.gov/epaoswer/

Office of Solid Waste Home Page: http://www.epa.gov/epaoswer/osw/index.htm

Office of Pollution Prevention and Toxics - Toxic Release Inventory Home Page:
http://www.epa.gov/opptintr/tri/

Chemical Emergency Preparedness and Prevention Office Home Page:
http://www.epa.gov/swercepp/crtk.html

Superfund Home Page: http://www.epa.gov/superfund/

Federal Facilities Restoration and Reuse Office Home Page: http://www.epa.gov/swerffrr/

Office of Underground Storage Tanks Home Page:
http://www.epa.gov/swerust1/index.htm

Mixed Waste Team Home Page: http://www.epa.gov/radiation/mixed-waste/

PESTICIDES/LEAD/RADON

Office of Prevention, Pesticides, and Toxic Substances Home Page:
http://www.epa.gov/internet/oppts/

Office of Pollution Prevention and Toxics: http://www.epa.gov/opptintr/

Office of Pesticide Programs Home Page: http://www.epa.gov/pesticides/

New Chemicals Program Home Page: http://www.epa.gov/opptintr/newchms/index.htm

APPENDIX F: WEB PAGES (continued)

WATER

Office of Water Home Page: http://www.epa.gov/ow/

Office of Ground Water and Drinking Water Home Page: http://www.epa.gov/ogwdw/

Oil Spill Program Home Page: http://www.epa.gov/oilspill/index.htm

Source Water Protection Home Page: http://www.epa.gov/ogwds/sdwa/sourcewa.html

AIR

Office of Air and Indoor Radiation Home Page: http://www.epa.gov/oar/

Office of Air Quality Planning and Standards Home Page:
http://www.epa.gov/oar/oaqps/

Acid Rain Program Home Page: http://www.epa.gov/acidrain/ardhome.html

Office of Mobile Sources Home Page: http://www.epa.gov/OMSWWW/

BASE CLOSURE

Federal Facilities Restoration and Reuse Office Home Page: http://www.epa.gov/swerffrr/

Department of Defense BRAC Program Home Page:
http://www.dtic.mil/envirodod/brac/

AMERICAN INDIAN TRIBES

American Indian Environmental Office Home Page: http://www.epa.gov/indian/

Municipal Solid Waste Management in Indian Country Home Page:
http://www.epa.gov/tribalmsw/

APPENDIX F: WEB PAGES (continued)

ENVIRONMENTAL JUSTICE

Environmental Justice Home Page: http://www.epa.gov/swerosps/ej/

Office of Enforcement and Compliance Assurance Environmental Justice Home Page: http://es.epa.gov/oeca/oejbut.html

National Environmental Justice Advisory Council Home Page: http://www.ttemi.com/nejac/

Environmental Justice Small Grants Program Home Page: http://es.epa.gov/oeca/oej/grlink1.html

OTHER RELEVANT WEB PAGES

Enviroene Home Page: http://es.epa.gov/

Federal Facilities Leadership Exchange Home Page: http://es.epa.gov/oeca/fedfac/fflex.html

National Enforcement Training Institute Home Page: http://es.epa.gov/oeca/neti/

Pollution Prevention Home Page: http://www.epa.gov/opptintr/p2home/

Council on Environmental Quality Home Page: http://www.whitehouse.gov/CEQ/

Council on Environmental Quality: NEPAnet Home Page: http://ceq.eh.doe.gov/nepa/nepanet.htm

Environmental Technology Verification Program Home Page: http://www.epa.gov/etv/

National Center for Environmental Publications and Information Home Page: http://www.epa.gov/ncepihom/

Federal Agency Roundtable Home Page: http://es.epa.gov/new/groups/rndagroup.html