



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

April 7, 2021

Partner Agency Colleagues:

The U.S. Environmental Protection Agency and our regulatory partners have a shared mission to protect human health and the environment, and compliance assurance activities are critical to the achievement of that mission. At the same time, we recognize the need to ensure the safety and protection of our inspector staffs during the ongoing public health emergency. Therefore, we are extending flexibility to states, tribes, territories, and local agencies (hereafter referred to collectively as “partner agencies”), to use both on-site and off-site compliance tools in a manner that protects the public, provides safeguards for our staffs, and ensures our mission of environmental protection continues to be carried out on behalf of the American people.

On July 22, 2020, EPA’s Office of Enforcement and Compliance Assurance (OECA) issued a letter to our partner agencies describing additional flexibilities and recommended processes to assist in meeting inspection¹ commitments during the COVID-19 public health emergency. That letter provided flexibilities through March 2021. Due to the continuing impacts of COVID-19, we are extending these flexibilities through September 2021 and will re-evaluate at that time whether further extension is necessary. Enclosed with this letter are recommended processes for adjusting partner agency on-site inspection commitments due to the COVID-19 public health emergency. This letter and the enclosure also provide additional clarification on the EPA officials with whom partner agencies should work to implement the flexibilities and document any adjustments.

While we believe that it is important to conduct on-site inspections when it is safe to do so, we will continue to allow off-site compliance monitoring activities to count towards a partner agency’s on-site inspection commitments under OECA’s Compliance Monitoring Strategies (CMSs) and towards grant commitments (*see* Enclosure). With advancements in technology, off-site compliance monitoring activities have the potential to be effective tools for determining noncompliance and for identifying on-site inspection priorities.² In documenting compliance monitoring activities, OECA continues to request that partner agencies report inspections, where there is an authorized inspector on-site, separately from off-site compliance monitoring activities.

In the July 22, 2020 letter, OECA requested that partner agencies document off-site compliance monitoring activities in the appropriate EPA database of record. It has come to our attention that this

¹ The term “inspection” refers to on-site government compliance monitoring activities performed by an authorized inspector for the purpose of assessing compliance at a regulated entity. The term does not refer to other on-site activities such as those providing technical assistance, compliance assistance, or site assessments (e.g., Safe Drinking Water Act sanitary surveys; Comprehensive Environmental Response, Compensation and Liability Act site assessments).

² This includes the use of Remote Video Partial Compliance Evaluations (RVPCE) that EPA and states are currently piloting. Draft RVPCE Standard Operating Procedure (SOP) and draft Notice and Information Request documents are available for use by partner agencies to guide their remote evaluation compliance monitoring activities.

guidance was not clear and, in some cases, not achievable. We are now recommending that, where practicable, partner agencies document the off-site compliance monitoring activities in the appropriate EPA database of record or other usual reporting mechanism.³ Where a program does not have an EPA database of record or other usual reporting mechanism to accept compliance monitoring data, or where the database or other reporting mechanism is unable to accept data on off-site compliance monitoring activities, OECA recommends that adjustments to on-site inspection commitments and the agreed upon off-site compliance monitoring activities be documented in a separate spreadsheet or other document. That document may also be used to record the performance of adjusted commitments.

The recommendations in this letter are not intended to supersede specific direction provided by other EPA National Program Managers regarding compliance monitoring programs they oversee (i.e., Underground Storage Tank and Underground Injection Control programs).

For State Review Framework reviews that will take place in federal fiscal year 2021 and beyond, OECA and regional Enforcement and Compliance Assurance Directors will work with partner agencies to make necessary adjustments to evaluate commitments where partner agencies utilize either the flexibilities described in this letter and its Enclosure or the existing flexibilities inherent in each CMS.

Thank you for your continued commitment to ensuring compliance with our environmental laws. If you have questions regarding this letter, please contact Martha Segall (segall.martha@epa.gov) at (202) 564-0723. Questions concerning OECA's State Review Framework can be directed to Chris Knopes (knopes.christopher@epa.gov) at (202) 564-2337.

Regards,

Lawrence E. Starfield
Acting Assistant Administrator

Enclosure

cc: Environmental Council of States, Executive Director and Officers
Executive Directors of Program-Specific State Associations (Association of Clean Water Administrators, Association of American Pesticide Control Officials, Association of State and Territorial Solid Waste Management Officials, Association of Air Pollution Control Agencies, National Association of Clean Air Agencies)
EPA-Tribal Partnership Groups (Tribal Pesticide Program Council, National Tribal Caucus, National Tribal Water Council, National Tribal Toxics Council, National Tribal Air Association, Tribal Waste and Response Steering Committee)
Regional Enforcement and Compliance Assurance Division Directors and Deputies

³ Examples of other usual reporting mechanisms include compliance monitoring plans, end of year reports, FIFRA and TSCA grantee end-of-year narratives, etc.

National Program Managers (Office of Water, Office of Land and Emergency Management, Office
of Air and Radiation, and Office of Chemical Safety and Pollution Prevention)
Office of Enforcement and Compliance Assurance Office Directors and Deputies
Office of Compliance Office and Division Directors

ENCLOSURE

Office of Enforcement and Compliance Assurance Recommended Processes for Adjusting Inspection Commitments Due to the COVID-19 Public Health Emergency

[Revised on April 5, 2021; Applicable through September 30, 2021]

There are a variety of processes used to establish and adjust inspection commitments that vary by program and sometimes by region. The U.S. Environmental Protection Agency's Office of Enforcement and Compliance Assurance (OECA), regional EPA Enforcement and Compliance Assurance Divisions (ECADs), and states, tribes, territories, and local agencies (hereafter referred to collectively as "partner agencies") should follow the appropriate processes for adjusting inspection commitments for OECA compliance monitoring programs. This is a summary of the processes that should be followed in adjusting inspection commitments:

1. For the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Toxic Substances Control Act (TSCA) compliance monitoring programs, OECA allocates funding to EPA regions, which then issue State and Tribal Assistance Grants for FIFRA and TSCA compliance monitoring activities. These inspection commitments are negotiated with the EPA regional project officer and placed in grant workplans. These grant workplans may be re-negotiated with your regional project officer in accordance with grant guidance provided by the Office of Grants and Debarment ([see Frequent Questions about Grants and Coronavirus \(COVID-19\)](#)). More specifics on reporting adjustments to inspection commitments and the use of off-site compliance monitoring activities can be found in the appropriate EPA grant/cooperative agreement guidance.
2. Other cooperative agreement and grant programs funding inspection activities under the Safe Drinking Water Act, Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), and the Underground Storage Tank programs are administered by other National Program Manager offices. Partner agencies should contact their regional grant project officers who administer those grant programs for their guidance on how to address COVID-19-related impacts on programmatic grant commitments and/or the appropriate contact within each regional ECAD.
3. For compliance monitoring commitments established through the five OECA Compliance Monitoring Strategies (CMSs) (CAA Stationary Source Program, CWA National Pollutant Discharge Elimination System (NPDES) Permit Program, FIFRA, TSCA, and RCRA Subtitle C Hazardous Waste programs) ([see OECA's Resources and Guidance Documents for Compliance Monitoring Webpage](#)), OECA recommends that partner agencies discuss with the appropriate regional contact whether off-site compliance monitoring activities can count towards commitments for on-site inspections. Effective off-site compliance monitoring approaches can help maintain the

integrity of programs and deter noncompliance during the COVID-19 public health emergency. Any agreements to adjust inspection coverage and frequency, or to count off-site compliance monitoring activities towards on-site inspection commitments because of the COVID-19 public health emergency, should be discussed with the appropriate regional contact (e.g., grant project officer) and documented by the partner agency. Please note that there are instances in which there is a statutory or regulatory inspection requirement reflected in the CMS goals (e.g., treatment, storage, and disposal facilities under RCRA Subtitle C and significant industrial users under the NPDES Pretreatment Program) for which EPA does not have authority to grant flexibilities. Additionally, over time, the RCRA Subtitle C, CAA Stationary Source, and NPDES CMSs have evolved to provide our partner agencies with flexibility to address local pollution and compliance concerns while maintaining national program integrity. OECA is not recommending that partner agencies submit an alternative compliance monitoring plan mid-course during the performance period to adjust their on-site inspection commitments under those CMSs based solely on the impact of the COVID-19 public health emergency. Rather, the need for off-site compliance monitoring activities to substitute for on-site inspections in the CMS plan should be discussed between partner agencies and the appropriate EPA regional contact at the time those adjustments are envisioned. Discussion forums and end-of-year reporting will provide an opportunity for each partner agency and EPA regional staff to discuss and document the adjusted compliance monitoring commitments that were implemented to maintain a robust compliance monitoring program given the challenges of the COVID-19 public health emergency.