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## ECOS State Survey on Offsite Compliance Monitoring: A Summary of Findings

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### Executive Summary

Some states have used offsite compliance monitoring (OfCM) for a number of years, and this practice increased during the pandemic to ensure the safety of staff in their regulated facility oversight roles. ECOS recently conducted a survey on the use of OfCM during the pandemic.

Among the 19 respondents, 13 states deploy these practices with Clean Air Act (CAA) stationary sites, six states use them with regard to Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) reviews, and seven states use them in Resource Conservation and Recovery Act (RCRA) Subtitle C program (hazardous waste) oversight evaluations. States also reported use of OfCM in the following programs: CAA 112(r) and mobile source; CWA Pretreatment; CWA Spill Prevention, Control, and Countermeasure (SPCC); Safe Drinking Water Act (SDWA) Public Water System Supervision (PWSS); SDWA Underground Injection (UIC); and Underground Storage Tank (UST).

States indicated that OfCM was effective and necessary during the pandemic to ensure staff safety and proper social distancing and allow inspectors to maintain a presence in the field. On an ongoing basis, states reported OfCM supplements – but does not supplant – state regulatory oversight and involvement. Benefits of continued use of OfCM include efficient use of staff time when there are long travel distances, state regulatory presence at a greater number of regulated facilities, and more efficient followup after an in-person inspection is conducted. Among the

challenges of OfCM are an inability to conduct unannounced monitoring, interruptions to video connectivity at facilities, and other challenges.

States remain interested in working with U.S. EPA to receive credit for OfCM activities related to their [Compliance Monitoring Strategy](#) (CMS) commitments.

## Background

### *What is OfCM and what does it entail?*

OfCM involves any inspection activities conducted without the physical presence of the inspector. In our research, states frequently mentioned desk audits, annual report reviews, and CAA stack test observations/reviews. OfCM also includes facility virtual walkthroughs, followup offsite evaluations, and other inspection activities not occurring onsite at a facility. For a number of years, some states have used OfCM techniques to supplement in-person inspection activities and expand the suite of compliance monitoring activities of regulated facilities.

OECA has established CMSs for each of the major media programs, providing national goals for how frequently facilities should be evaluated by the authorized enforcement agency. Each program, state, and local agencies define evaluations to meet national goals. In general, each U.S. EPA national program office has an inspection frequency schedule that recommends more frequent inspections for larger facilities and less frequent inspections for smaller facilities. U.S. EPA offers flexibility to states to help align priorities within a specific state.

In the course of the pandemic, OfCM has been an important oversight tool and staff safety measure and OECA allowed partner agencies the flexibility to include OfCM activities in inspection commitments. OECA's [latest memo](#), issued December 30, 2021, extended its policy issued on September 28, 2021 through March 31, 2022 related to OfCM activities and the pandemic. In addition, U.S. EPA has updated its Enforcement & Compliance History Online (ECHO) display of inspection and other compliance monitoring activities to more consistently reflect this information for both U.S. EPA and state activities.

Early in the pandemic, states and U.S. EPA recognized a need for coordination and information sharing around inspection activities. The state-EPA Remote Video Partial Compliance Evaluation (RVPCE) Workgroup was tasked with: developing and pilot-testing protocols for the use of video tools to conduct remote compliance monitoring; sharing updates on the status of pilots and reporting on the timeline on returning to regular compliance activities; and evaluating the effectiveness of remote compliance monitoring to determine how it might count toward completion of compliance monitoring commitments both during and following the COVID-19 pandemic. Though the workgroup did not finalize a RVPCE procedure, individual states and EPA Regions developed draft OfCM procedures and summaries to share with the workgroup. Documents ranged from brief inspection summaries to more detailed procedural guidelines to assist other workgroup members in the development of their own inspection plans. Takeaways included which mobile tools and software were most effective for conducting RVPCE, how to work with facility staff to ensure a safe walkthrough, and other media-specific considerations for inspectors.

## Summary of State Activities

Using survey questions developed by OECA for its regional offices, in late spring 2022, ECOS gathered information from states via outreach to ECOS members and members of the Association of State & Territorial Solid Waste Management Officials, Association of Air Pollution Control Agencies, National Association of Clean Air Agencies, Association of State Drinking Water Administrators, and Association of Clean Water Administrators. In total, ECOS received responses from 19 states across multiple media programs, including Alaska, Arkansas, Colorado, Connecticut, Hawaii, Iowa, Indiana, Kentucky, Louisiana, Massachusetts, North Carolina, Nebraska, Nevada, New Jersey, New York, Virginia, Washington, Wisconsin, and Wyoming. Table 1 below indicates which states submitted responses, which programs were included in their OfCM activities, and whether a formal enforcement action resulted from OfCM activities overall. States noted OfCM activities for the CAA stationary, 112(r), and mobile source programs; CWA NPDES, Pretreatment, and SPCC programs; SDWA PWSS and UIC programs; and RCRA Subtitle C programs (hazardous waste). Table 2 summarizes state reported OfCM activities by media.

Table 1. Summary of State OfCM Activities by Program\*

State (19 total)	Formal Enforcement as result of OfCM Overall	CAA Stationary Source	CAA 112R	CAA Mobile Source	CWA NPDES	CWA Pretreatment	CWA SPCC	SDWA PWSS	SDWA UIC	RCRA Subtitle C	RCRA UST
AK	x	x									
AR	x	x			x	x				x	
CO					x						
CT	x	x			x	x			x	x	
HI	x	x									
IA		x			x			x			
IN		x									
KY	x	x									
LA		x	x	x			x			x	x
MA								x			
NC	x	x	x	x							
NE	x	x			x	x					
NJ										x	
NV					x						
NY	x	x									
VA	x									x	
WA										x	
WI	x	x								x	
WY	x	x									x
<b>Totals</b>	<b>11</b>	<b>13</b>	<b>2</b>	<b>2</b>	<b>6</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>7</b>	<b>2</b>

*\*Chart includes only those programs where an OfCM activity was reported by a state.*

**Table 2. Summary of Reported State OfCM Activities by Media**

<b>Media</b>	<b>States completing Offsite Compliance Monitoring Activities</b>
Air	AK, AR, CT, HI, IA, IN, KY, LA, NC, NE, NY, WI, WY
Clean Water	AR, CT, CO, IA, LA, NE, NV
Drinking Water	CT, IA, MA
RCRA Subtitle C	AR, CT, LA, NJ, VA, WA, WI
UST	LA, WY

## Benefits and Challenges Regarding State OfCM

### *Benefits*

OfCM provided states an immediate means of continuing inspection activities during the COVID-19 pandemic and stay-at-home orders while increasing staff safety in accordance with social distancing guidelines. Meanwhile, to the extent that inspections could be completed in accordance with social distancing guidelines, inspectors were able to conduct traditional onsite inspections.

A few states have historically conducted OfCM even prior to the pandemic. For instance, the District of Columbia Department of Energy & Environment has employed remote tools for more than a decade in report reviews and the Indiana Department of Environmental Management (IDEM) has conducted remote report reviews since implementing Title V of the Clean Air Act in 1996. IDEM uses OfCM report reviews for every Title V and SM80 facility annually, including those sources that would not normally be inspected in person per the agency's CMS. There are also opportunities for compliance assistance approaches such as using offsite tools for return to compliance inspections or self-inspection self-reporting (SISR).

States reported several beneficial aspects of OfCM. The use of virtual tools allows inspectors to reduce some of the costs and logistical challenges from traveling to remote areas. In states with a large geographic area, inspectors may have to spend days traveling to conduct inspections. While conducting OfCM, inspectors may collaborate from the office, allow for mentoring of new inspectors, or invite other observers (i.e., EPA Regions) to join via video. Staff may be able to conduct multiple observations simultaneously. Inspections with a heavy records component, such as stormwater management program inspections, Pretreatment Compliance Inspections, and CAA Stack Test Observations and Reviews, are made less burdensome by enabling facilities to share documents online and allowing inspectors to review remotely and follow up quickly with any additional records requests.

State agencies must leverage limited resources to meet federal inspection requirements, and smaller facilities may not receive as much attention if they are not specifically identified in a CMS. OfCM provides states the ability to better address these issues, and to report violations in a timely manner and better allocate field personnel time. In this regard, the Connecticut Department of Energy & Environmental Protection (CT DEEP) noted that the Air Bureau developed offsite Partial Compliance Evaluations (PCEs) during the pandemic to provide enhanced compliance monitoring of true minor sources, especially in disadvantaged communities. These PCEs often covered facilities that would normally not be subject to inspection. CT DEEP also found this approach useful for administration and compliance audits of its emission trading programs.

Several states highlighted the added benefit of using OfCM tools to create additional touchpoints with facility staff. Building the relationships with the regulated community makes it easier for regulators to communicate effectively and address any concerns in a timely manner. States may also use OfCM to confirm facility actions taken following an inspection.

### *Challenges*

In some cases, regulators seek to conduct unannounced inspections. OfCM activities require an additional level of coordination between inspectors and facility staff with advance planning, making an unannounced visit impossible. For the most part, OfCM walkthroughs were conducted on a voluntary basis, but there may be additional challenges if a facility were to deny "virtual entry."

When conducting a virtual walkaround, states did note some challenges such as estimating the distance between objects, the contents of a container, and the existence of cracks or gaps which are all difficult to judge via video feed. The virtual format also relies on the ability of inspectors to give and direct instructions on where facility staff need to point the camera. There could also be issues with connectivity at remote locations or onsite in areas with poor cell service (e.g., inside a large warehouse).

## Conclusion

States indicated that OfCM was effective and necessary during the pandemic to ensure staff safety. Whereas many facility walkthrough inspections require inspectors and facility staff to be in close proximity in sometimes confined spaces, OfCM allowed for proper social distancing while still allowing inspectors to maintain a presence in the field.

States also reported that OfCM allows for efficient use of staff time when there are long travel distances. In addition, state staff noted that OfCM can increase state regulatory presence with a greater number of regulated facilities and enable for more efficient follow-up after an in-person inspection is conducted, thereby supplementing and expanding in-person inspection monitoring.

Going forward, states will continue to seek the flexibility to use OfCM as a tool in the compliance monitoring toolkit and to receive credit for OfCM activities in their CMS.

ECOS greatly appreciates U.S. EPA's collaboration with states and ECOS in developing these compliance tools and guidance.