

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

OFFICE OF ENFORCEMENT
AND COMPLIANCE
ASSURANCE

March 3, 1999

MEMORANDUM

SUBJECT: Implementing the National Performance Measures Strategy – First Phase

FROM: Steven A. Herman /S/
Assistant Administrator

TO: Regional Administrators, Regions I-X
Deputy Regional Administrators, Regions I-X
Regional Enforcement Division Directors and Coordinators, Region I-X

The purpose of this memorandum is to request that all Regions begin to collect and report information necessary to support the first phase of implementation of new measures developed under the National Performance Measures Strategy for EPA's enforcement and compliance assurance program. I am requesting that data collection begin as of April 1, 1999 for the measures identified below and that data reporting occur in accordance with the guidance provided in the attachments to this memo.

Background on the National Performance Measures Strategy

The National Performance Measures Strategy was initiated by OECA in February 1997 to identify, design, implement and use an enhanced set of performance measures for EPA's enforcement and compliance assurance program. Michael Stahl, OECA's Deputy Assistant Administrator, has been leading our work on the Strategy since its inception. The Strategy was designed to help us measure the state of compliance with environmental laws, the environmental results we achieve through our activities, and the degree to which program objectives are being met and noncompliance problems are being addressed. The Strategy was also designed to help us address the Government Performance and Results Act (GPRA), which requires performance measures for agency objectives and emphasizes the need for more outcome-based measures.

During 1997, EPA held more than 20 public meetings with internal staff, regulatory partners in state environmental agencies, and external stakeholders – including environmental organizations, regulated industries, environmental justice advocates, oversight agencies, Congressional staff, and academic experts – to identify the "vital

few" performance measures which could best serve EPA and the public. This effort was guided by a steering committee of headquarters and regional managers and staff and resulted in the selection of twelve sets of measures known collectively as the Performance Profile. A report about the stakeholder discussions and the selection of the measures was issued by OECA in December 1997. Both the Profile and the 12/97 report can be found on the OECA website at <http://es.epa.gov/oeca/perfmeas>.

During 1998 and now into 1999, headquarters and regional workgroups, assisted by contractors and expert consultants, have been working to design the measures by developing definitions, information and collection and reporting processes, modifications to existing data systems, and by conducting pilots projects to test certain measures. This effort is also being guided by an implementation steering committee of headquarters and regional managers and staff.

Implementation of the Performance Measures

We are now ready to implement the measures. Based on an assessment of the progress made in designing each of the measures, we are dividing implementation into two phases. Attachment 1 delineates all the measures by implementation time-frame, and identifies new reporting requirements. The first phase calls for implementation of several sets of measures by April 1 so that we can collect and analyze information from the third and fourth quarters of FY99 and evaluate the continued use of these measures. The remaining measures will be implemented in a second phase so that they will become operational at the beginning of FY 2000.

The measures to be implemented in Phase I are listed below and described in Attachments 1-5:

- average duration for significant violators to return to compliance (Set #6)
- percentage of significant violators with recurrent violations (Set #7)
- number of investigations conducted (Set #8)
- responses to citizen complaints (Set # 8)
- number of notices of violation issued by media program (Set #9)
- capacity building efforts provided to state, local, or tribal programs (Set #11)

Measures which will be implemented in Phase II are:

- statistically valid compliance rates for selected regulated populations (Set #1)
- environmental and human health improvements from compliance assistance (Set #3)
- environmental and human health improvements from integrated initiatives (Set #4)
- number of record reviews (Set #8)

For Phase II measures, we need to finish regional pilots and review forthcoming technical reports by consultants and pilot Regions. Because this design work for these measures cannot be completed in the next two-three months, we will implement them in

a second phase currently targeted for October 1, 1999, the beginning of Fiscal Year 2000. A guidance memo similar to this one will be issued in August or September of 1999 for implementation of these measures. Regions conducting pilots for Phase II measures should submit final reports to their headquarter contacts by July 30, 1999.

There are other measures in the Performance Profile which we have been using for many years (Set #8, number of inspections conducted; Set #9, number of civil and criminal cases initiated and concluded) and for which we anticipate no collection or reporting changes. There are also some measures in the Profile we have been using for about two years and for which we will be making some refinements as part of Phase II. These measures are: Set #2, environmental and human health improvements from enforcement actions; Set #5, self-policing efforts using EPA incentive policies; Set # 10, facilities/entities reached through compliance assistance tools and initiatives.

It should be noted that the measures developed under the National Performance Measures Strategy are intended to apply only to EPA's national and regional enforcement and compliance assurance programs. No new reporting requirements are imposed on state programs through these measures.

Reporting

For a complete list of reporting mechanisms and time frames for all measures, refer to the table in Attachment I.

Reporting for all Phase I measures (3rd and 4th Qtr '99 activity) should be reported according to the schedule in the End of Year Enforcement and Compliance Data Reporting Memorandum from Office of Compliance, typically sent out in September. Three of the measures should be reported manually for end of year '99 reporting using the forms provided in Attachments 3 and 5. (Consideration is being given to establish electronic reporting beginning in FY 2000, possibly using Lotus Notes.) All other measures will be reported through existing data systems.

Reporting for Phase II measures will be required semi-annually beginning in FY 2000 according to the schedules in the mid-year and end of year reporting memoranda from the Office of Compliance.

The Importance of Enhanced Performance Measures

The Performance Profile offers regional and headquarters staff and managers an opportunity to make our enforcement and compliance assurance program even more effective. The Profile provides a management tool that measures the full range of program activities, measures the results and outcomes of those activities, fosters fact-based analysis of the relationship between activities and results, and improves our ability to allocate resources to produce the best results for the public. The Profile also provides improved accountability to the public by offering transparent performance information that reflects the key activities we conduct and the important results we

achieve on their behalf.

The Profile offers Regions many advantages. First, it gives recognition for many activities you have been performing but for which you have received little or no credit in management reviews of Regional programs. Second, because most of the outcome data will be available on a Region-by-Region basis, you will be able identify the results you achieve, discern which combination of activities produced the appropriate results, and adjust strategies accordingly. Third, the Profile offers a model for working with your States to develop meaningful performance measures for their enforcement and compliance assurance programs.

Implementing an enhanced set of performance measures remains a major priority for OECA. Our FY2000 Memorandum of Agreement (MOA) Guidance identifies implementation of enhanced performance measures as one of our management priorities and requests that each Region designate a Performance Measurement Lead to oversee implementation of the Performance Profile (see page 3 of the Draft MOA Guidance). In addition, the measures in the Performance Profile have been incorporated as part of OECA's FY2000 Annual Performance Plan required by GPRA. The EPA/ECOS enforcement and compliance assurance accountability measures to be used in FY2000 Performance Partnerships Agreements are drawn from the measures in the Performance Profile.

Conclusion

The measures in the Performance Profile have been carefully designed and developed through a process of collaboration and cooperation with all Regions. I ask that you ensure the full participation of your Region in the implementation of these enhanced performance measures. We will be using the measures to improve the focus of upcoming management discussions and thereby increase the effectiveness of our programs.

If you have any questions about implementation or about the National Performance Measures Strategy, please call me, Sylvia Lowrance, or Michael Stahl at 202-564-2445.

Attachments (5)