

Expanding Compliance Monitoring to Include Activities Beyond Inspections and Investigations

Background: Compliance monitoring is a key component of the enforcement program. The media program Compliance Monitoring Strategies (CMS) traditionally have considered inspections and investigations the primary means by which coverage of the regulated universes is provided. However, new technologies create opportunities. As the regulated universes expand with new rules, and as resources are constrained, it is important that we think more broadly about how to meet the goals of compliance monitoring activities. Goals include:

- assessing and documenting compliance with permits and rules,
- supporting the enforcement process through evidence collection,
- monitoring compliance with enforcement orders and decrees,
- creating deterrence, and
- providing feedback on implementation challenges to permit and rule writers.

These goals can be achieved through a broader spectrum of activities that determine compliance status at a facility-specific level.

CMSs are generally based on inspections (the term used for the CAA is evaluations) which make a definitive and documented assessment of facility-specific compliance. While all the media CMS's offer flexibility for states to consider commitments that reflect their unique regulated universes, they vary in the degree they consider activities beyond inspections or investigations. EPA is looking collectively across the media CMS's to ensure consistent flexibility options (as appropriate) and to determine other compliance monitoring activities that warrant inclusion in CMS plans.

Below is a draft outline of how compliance monitoring activities could be expanded to provide flexibility in assessing facility level compliance of the regulated universe across the CWA NPDES, CAA Title V, and RCRA Subtitle C programs. OECA intends to further discuss this expanded menu of compliance monitoring activities with regions, states and tribes to determine if they should be included as accepted activities under CMS plans. By including this broader range of activities under the CMS, EPA and states will have increased flexibility to focus their programs on the most significant pollution sources and most serious violations using a variety of compliance monitoring activities.

The draft below was developed through discussion between OECA and EPA regional staff.

Next Steps:

- OECA will hold a national level dialogue with authorized or delegated states and tribes on what activities should be included in compliance monitoring plans.
- Consult with OECA senior management.
- Review and adjust CMS policies.
- Work with ICIS and other data systems to consider reporting and systems changes that might be needed.
- Develop implementation strategy including necessary reporting.

Expanding Compliance Monitoring

1. Compliance monitoring encompasses all of the means used to determine the compliance status of a facility, ranging from off-site record or data reviews to on-site inspections.¹

Activities may include:

- On-site
 - Full inspections
 - Partial inspections
 - Record and document reviews
 - Electronic review (cameras or other detectors gathering ambient/process or other data)
 - Facility assessments
 - Sampling activities
 - Review of facility-specific fence line monitoring data
 - Continuous emissions monitoring data review
- Off-Site
 - Partial compliance evaluations
 - Full compliance evaluations
 - Record and document reviews
 - Review of facility sampling or monitoring data (self-reported or agency gathered)
 - Evaluating responses to formal information requests (eg. CAA 114, CWA 308, RCRA 3007 information requests)
 - Subpoenas
 - Stack Test/Compliance Evaluation Review
 - Reviews of other facility-submitted reports
- Other Activities (could be on-site or off-site)
 - Investigations which include compliance monitoring activities
 - Ambient environmental screening associated with a particular facility or group of facilities
 - Evaluating and addressing citizen complaints leading to facility specific compliance monitoring
 - Assessments conducted as part of jurisdictional and regulatory determinations (e.g., CAFO determination and designation, waters of the U.S. determination) leading to facility specific compliance monitoring

¹ Inspections are called evaluations under the Clean Air Act compliance monitoring strategy

2. In order for EPA to count an activity as “compliance monitoring,” the:
 - A. “On-site activities” must be conducted by an authorized inspector (consistent with appropriate federal, state or tribal authority) with the purpose of determining facility compliance;
 - B “Off-site activities” must conducted by an authorized inspector (consistent with appropriate federal, state or tribal authority) or other credible regulator (e.g. sufficient knowledge, training, or experience to determine compliance and whose work is reviewed by appropriate management or legal personnel) for the purpose of determining compliance;
 - C The activity must lead to a determination of compliance for a site or facility; and
 - D. The activity must be documented and reported to the relevant data system to ensure transparency, accountability, and appropriate follow-up.
3. Annual reporting would include:
 - Counts of activities (facility specific) data records;
 - Results of activities (violations, SNC/ HPV, informal/formal enforcement)
 - Plan submittal